TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1932

No. 80

MURPHY OIL COMPANY, PETITIONER,

vs.

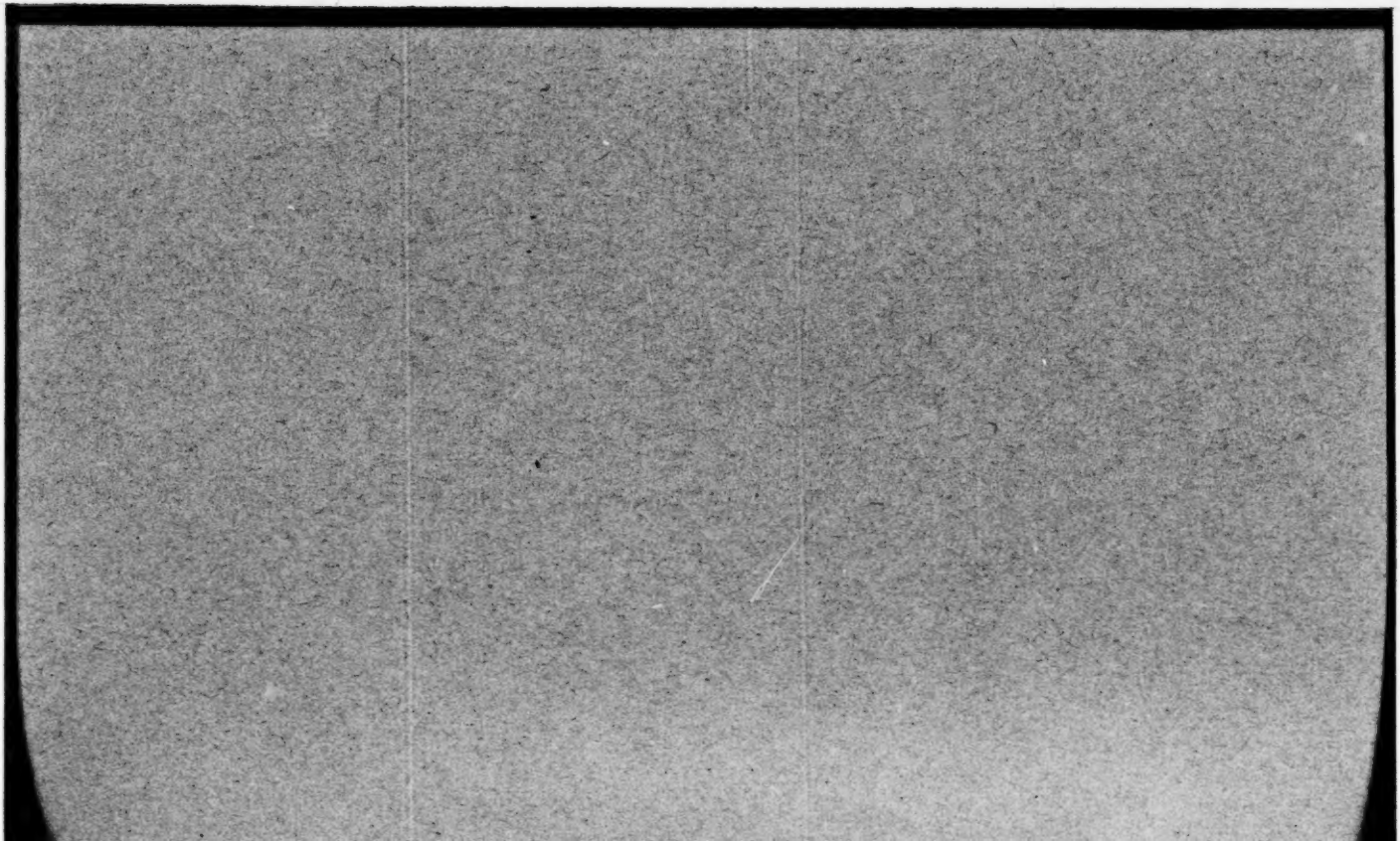
DAVID BURNET, COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED MAY 16, 1932

CERTIORARI GRANTED MAY 31, 1932

(36,769)



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No. 6388

United States
Circuit Court of Appeals
For the Ninth Circuit

MURPHY OIL COMPANY, a Corporation,
Petitioner,

vs.

DAVID BURNET, Commissioner of Internal Revenue,
Respondent.

Transcript of Record.

Upon Petition to Review an Order of the United States Board of Tax Appeals.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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DOCKET No. 14,440. [1*]

MURPHY OIL COMPANY,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

APPEARANCES.

For Petitioner: RANDOLPH E. PAUL, Esq.
KENYON F. LEE, Esq.
THOS. R. DEMPSEY, Esq.
ELMONT B. HAZARD, Esq.
GEO. E. HOLMES, Esq.
CHAS. B. McINNIS, Esq.
V. B. HAVENS, Esq.

For Respondent: JOHN D. FOLEY, Esq.
W. F. GIBBS, Esq.

DOCKET ENTRIES.

Mr. MORRIS 11/9/29.

1926.

Apr. 24—Petition received and filed.

May 5—Copy of petition served on Solicitor.

May 5—Notification of receipt mailed taxpayer.

June 24—Answer filed by solicitor.

Aug. 4—Copy of answer served on taxpayer—assigned to General Calendar.

1927.

Feb. 15—Notice of appearance of Elmont B. Hazard as counsel for taxpayer.

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*Page-number appearing at the top of page of original certified Transcript of Record.

1928.

Feb. 20—Hearing date set 4/19/28.

Apr. 3—Motion for leave to file amended petition, amendment tendered, filed by taxpayer.

Apr. 5—Hearing set on motion 4/11/28.

Apr. 5—Copy of motion and amendment served on General Counsel.

Apr. 11—Hearing had before Mr. Littleton on taxpayer's motion to amend—granted. Continued to May 16.

Apr. 11—Ordered motion be granted—case stricken from 4/19/28 to May 16, 1928, entered.

Apr. 14—Answer filed by General Counsel. Copy served 4/19/28.

May 16—Hearing had before Mr. Sternhagen—continued 30 days. Stipulation pending.

May 16—Order of continuance to June 20, 1928, entered.

June 13—Motion to transfer to Reserve Calendar filed by taxpayer.

June 14—Motion granted.

Aug. 17—Motion to set down for hearing filed by General Counsel. Granted Aug. 22, 1928.

Aug. 28—Hearing set Oct. 22, 1928.

Sept. 20—Motion for leave to file second amended petition filed by taxpayer. Amendment tendered.

Sept. 21—Motion granted.

Sept. 22—Stipulation to take depositions filed.

Sept. 24—Copy of motion and amended petition served on General Counsel.

[2] 1928.

Sept. 25—Answer to second amended petition filed by General Counsel. Copy served 9/27.

Oct. 15—Depositions of Kenyon F. Lee filed (2). Notary served taxpayer. 10/16 copy served on General Counsel.

Oct. 22—Hearing had before Mr. Siefkin. Submitted on stipulation. Taxpayer's brief due Dec. 20.

Oct. 29—Transcript of hearing Oct. 22 filed.

Dec. 19—Motion for extension to Jan. 21, 1929, to file brief filed by taxpayer. Granted 12/20/28.

1929.

Jan. 5—Brief filed by General Counsel.

Jan. 21—Brief filed by taxpayer.

Mar. 15—Motion to withdraw original exhibit and substitute copy filed by taxpayer. 3/18/29 granted.

Mar. 30—Findings of fact and opinion rendered—Mr. Siefkin. Judgment will be entered under rule 50.

Dec. 7—Notice of settlement filed by taxpayer. 12/11/29 copy served on General Counsel.

Dec. 10—Hearing set Jan. 8, 1930, on settlement.

1930.

Jan. 8—Hearing had before Mr. Murdock, Division 3, on settlement rule 50. Continued to Jan. 15, 1930.

Jan. 8—Order of continuance to Jan. 15, 1930, on settlement entered.

Jan. 15—Hearing had before Mr. Morris, Division 14, on settlement rule 50. Assigned to Mr. Morris, Division 14 for order.

Jan. 17—Decision entered—Logan Morris, Division 14.

July 11—Petition for review to U. S. Circuit Court of Appeals, 9th Circuit, with assignments of error filed by General Counsel.

July 15—Petition for review by U. S. Circuit Court of Appeals (9) with assignments of error filed by taxpayer.

July 16—Proof of service of taxpayer's petition for review filed.

July 17—Proof of service of General Counsel's petition for review filed (attorney).

July 28—Proof of service filed by General Counsel.

Sept. 9—Motion for extension to Oct. 31, 1930, to prepare and transmit record filed by General Counsel.

Sept. 9—Order enlarging time to Oct. 31, 1930, for preparation of evidence and transmission and delivery of record entered.

Sept. 13—Motion for extension to Oct. 31, 1930, to file statement and certify record filed by taxpayer.

Sept. 15—Order enlarging time to Oct. 31, 1930, for preparation of evidence 9th Circuit entered.

Oct. 31—Motion for extension to Jan. 31, 1930, to prepare and transmit record filed by General Counsel.

Oct. 31—Order enlarging time to Jan. 31, 1931, for Commissioner to prepare and transmit record entered.

Oct. 31—Motion for extension to Jan. 31, 1931, to prepare and transmit record filed by taxpayer.

Oct. 31—Order enlarging time to Jan. 31, 1931, for petitioner to prepare and transmit record entered.

[3] 1931.

Jan. 31—Motion for extension to Feb. 28, 1931, to prepare statement and transmit record filed by taxpayer.

Jan. 31—Order enlarging time to Feb. 28, 1931, for preparation of evidence and transmission and delivery of record entered.

Jan. 31—Motion for extension to Feb. 28, 1931, to prepare evidence and transmit record filed by General Counsel.

Jan. 31—Order enlarging time to Feb. 28, 1931, for preparation of evidence and trans-

mission and delivery of record entered.

Jan. 31—Praecipe with proof of service thereon filed by taxpayer.

Now, Feb. 20, 1921, the foregoing Docket Entries certified from the record as a true copy.

[Seal] B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

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[4] Filed Sept. 21, 1928. U. S. Board of Tax Appeals.

United States Board of Tax Appeals.

DOCKET No. 14,440.

MURPHY OIL COMPANY,
Petitioner,

against

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

SECOND AMENDED PETITION.

The above-named petitioner filed a petition with this Board, under date of April 24, 1926, appealing from the determination of the Commissioner of Internal Revenue, set forth in his deficiency letter, dated February 6, 1926. Subsequently this petitioner filed an amended petition, under date of April 3, 1928. This second amended petition is hereby filed as an amendment to the original peti-

tion and first amended petition. As a basis for its appeal, the petitioner sets forth the following:

I. The petitioner is a corporation organized under the laws of the State of California, with its home office at Whittier, California.

II. The deficiency letter from which this appeal is made was mailed to the petitioner on February 6, 1926. The sixty-day period within which to appeal to this Board, as granted in that deficiency letter, was subsequently extended to April [5] 26, 1926, by the Revenue Act of 1926. A copy of the deficiency letter from which this appeal is made is attached hereto, marked Exhibit No. 1.

III. The deficiencies asserted in the letter of February 6, 1926, are for income and excess profits taxes for the calendar years 1919 and 1920 and are in the amounts of $76,740.20 and $321,660.33, respectively. The total amounts of these deficiencies are in controversy.

ASSIGNMENTS OF ERROR.

IV. The determination of the deficiencies set forth in the said deficiency letter is based upon the following errors:

(a) The Commissioner erred in refusing to allow as a deduction from net income for the year 1919, the sum of $170,877.24 paid in that year as legal expenses in defending an action against the petitioner for an accounting relative to a portion of its oil properties, to wit, its Coyote Oil properties.

(b) The Commissioner erred in refusing to allow, as a deduction from net income for the year

1919, the sum of $1,200,000 paid in that year in settlement of a suit for an accounting brought against the petitioner relative to its Coyote Oil properties.

(c) The Commissioner further erred in determining that the amounts of $170,877.24 and $1,200,000 paid by the petitioner during the year 1919 and the amount of $32,901.34 paid by the petitioner during the year 1918, in connection with a suit for [6] an accounting, relative to its Coyote Oil property, constitute capital expenditures, and at the same time failing to determine that such amounts should be amortized over the remaining life of the said Coyote Oil property.

(d) The Commissioner erred in deducting from the capital sum returnable through depletion of the petitioner's Whittier Oil property, an amount of $656,192.48 representing a bonus received by the petitioner upon the leasing of the said oil property, in computing the amount of depletion sustained by the petitioner in connection with the said Whittier Oil property for the calendar years 1919 and 1920.

(e) The Commissioner erred in deducting from the capital sum returnable through depletion of the petitioner's Coyote Oil property, an amount of $4,517,402.70, representing a bonus received by the petitioner upon the leasing of the said oil property, in computing the amount of depletion sustained by the petitioner in connection with the said Coyote Oil property for the calendar years 1919 and 1920.

(f) The Commissioner erred in reducing petitioner's depletable base for both the Whittier and

Coyote Oil properties by an amount alleged to represent depletion sustained on the March 1, 1913, value and subsequent cost of the said properties during the period from March 1, 1913, to December 31, 1915, whereas he should have reduced petitioner's depletable base by the amount of depletion which petitioner was legally entitled to take as a deduction in determining its taxable income for the said period from March 1, 1913, to December 31, 1915.

[7] STATEMENT OF FACTS.

V. The facts upon which the petitioner relies as a basis of this appeal are as follows:

(1) The Murphy Oil Company was incorporated on or about August 18, 1904, under the laws of the State of California.

(2) The petitioner corporation, through its agents, purchased from one Domingo Bastanchury by deed dated December 15, 1904, 2,240 acres of land in Orange County, California, at a price of $35 per acre.

(3) The total price paid by the petitioner corporation for the said 2,240 acres of land in Orange County, California, amounted to $79,400.

(4) Subsequent to the purchase of the said land and prior to March 1, 1913, the petitioner corporation discovered that approximately 840 acres of said land contained valuable oil-bearing sands.

(5) On or about August 26, 1918, Maria Bastanchury, the widow of the said Domingo Bastanchury, and administratrix with the will annexed of his es-

tate, filed a complaint in the Superior Court of Los Angeles County, California, against the Murphy Oil Company and the individual, who in 1904 managed the company's affairs and properties, for an accounting of the profits received by the Murphy Oil Company from the said Coyote property.

(6) The Murphy Oil Company employed a number of counsel and took active steps to defend itself.

(7) In its answer to the complaint of the said Maria Bastanchury as administratrix with the will annexed of the estate of Domingo Bastanchury, the Murphy Oil Company denied all the material allegations in the said complaint and vigorously [8] opposed the complainant's prayer for an accounting of the profits received from said Coyote property.

(8) While the case was being prepared for trial, to wit, in the month of April, 1919, it came to the attention of the Murphy Oil Company that said Maria Bastanchury was willing to consider a settlement.

(9) After a long conference on the part of the officials of the Murphy Oil Company, it was decided, in order to minimize the extensive costs of the suit and to avoid as much as possible the disagreeable notoriety accompanying the suit, to settle, if a satisfactory settlement could be made.

(10) After long negotiations through a banker in Los Angeles, the two parties to the suit agreed upon a settlement whereby the said Maria Bastanchury withdrew her request for an accounting and agreed to accept the sum of $1,200,000, in full settle-

ment of any damages that the Estate of Domingo Bastanchury may have suffered as a result of any action of the Murphy Oil Company.

(11) Accordingly a judgment was entered against the Murphy Oil Company for damages in the amount of $1,200,000 under date of April 28, 1919, which judgment was paid immediately thereafter.

(12) The petitioner corporation paid during the year 1918 legal fees and other expense in connection with the above-mentioned litigation in the amount of $32,901.34.

(13) The petitioner corporation during the year 1919 paid legal fees and other legal expenses in connection with the above-mentioned litigation in the amount of $170,877.24.

(14) The petitioner corporation, in its accounts, treated the amount of $32,901.34, paid during the year 1918 in connection [9] with the above-mentioned litigation, as a deductible expense in computing its taxable income for that year.

(15) The Commissioner reversed the petitioner's action and refused to allow the amount of $32,-901.34 as a deduction in computing the petitioner's taxable income for the year 1918.

(16) The Commissioner failed to amortize the said amount of $32,901.34, paid during the year 1918 in connection with the above-mentioned litigation, over the remaining life of the petitioner's Coyote Oil proprty.

(17) The petitioner in its accounts treated the amount of $1,370,877.24, paid during the year 1919

in connection with the above-mentioned litigation, as a loss during the calendar year 1919.

(18) The Commissioner reversed the petitioner's action in treating the above-mentioned amount as a loss and refused to allow any part of the said amount as a deduction in computing taxable net income for the year 1919.

(19) The Commissioner further refused to amortize the said payment of $1,370,877.24, over the remaining life of the petitioner's Coyote Oil property.

(20) The Commissioner determined that petitioner's share of oil reserves in the Coyote Oil property at December 31, 1918, amounted to 5,044,673 barrels.

(21) The Commissioner determined that the amount of oil produced from the petitioner's share of the Coyote Oil property during the year 1919 was 1,644,897 barrels.

(22) The Commissioner determined that the petitioner's share of the oil reserves in the Coyote Oil property at December [10] 31, 1919 amounted to 3,399,776 barrels.

(23) The Commissioner determined that the oil produced from petitioner's share of the Coyote Oil property during the year 1920 amounted to 1,340,237 barrels.

(24) The petitioner leased to the Standard Oil Company, under date of December 1, 1913, its Whittier Oil property and its Coyote Oil property for a one-fourth royalty and a bonus of $5,500,000.

(25) The Commissioner determined that $326,-

404.82 of the bonus represented payment for physical property and that the remaining amount of $5,173,595.18 represented a bonus on the two oil properties.

(26) The Commissioner further determined that $656,192.48 of the said amount of $5,173,595.18 represented a bonus on petitioner's Whittier Oil property and that the remaining amount of $4,517,402.70 represented a bonus on petitioner's Coyote Oil property.

(27) The Commissioner deducted from the capital sum returnable through depletion of petitioner's Whittier Oil property, the said amount of $656,-192.48 representing the bonus applicable to the said Whittier Oil property, in determining the unit of depletion sustained by the petitioner on the amount of oil produced from the Whittier Oil property for the years 1919 and 1920.

(28) The Commissioner deducted from the capital sum returnable through depletion of petitioner's Coyote Oil property, the said amount of $4,517,-402.70 representing the bonus applicable to the said Coyote Oil property, in determining the unit of depletion sustained by the petitioner on the amount of oil produced from [11] the Coyote Oil property for the years 1919 and 1920.

(29) The Commissioner determined that the depletion sustained by the petitioner on its Coyote and Whittier Oil properties during the period from March 1, 1913 to December 31, 1915, was as follows:

Year	Depletion sustained on March 1, 1913, value and subsequent cost.
1913	$257,375.58
1914	153,310.73
1915	34,771.69
Total	$755,458.00

(30) The Commissioner reduced petitioner's depletable base by the above amount of $755,458.00 in determining the amount of depletion allowable for the years 1919 and 1920.

(31) The gross value at the well of all of the petitioner's share of oil produced from its Whittier and Coyote Oil properties during the period from March 1, 1913, to December 31, 1915, amounted to $878,531.23.

(32) Under subdivision G (b) of the Revenue Act of 1913, approved October 3, 1913, the maximum amount of depletion which petitioner was legally entitled to deduct in computing its taxable net income for the period March 1, 1913, to December 31, 1915, was five per cent of the gross value at the well of the oil produced during the said period.

(33) Five per cent of the gross value of petitioner's total share of oil produced from its Whittier and Coyote properties during the period from March 1, 1913, to December 31, 1915, amounted to $43,926.56. The difference between this amount and the amount of depletion alleged to have been sustained on the March 1, 1913, [12] value and subsequent costs, or $711,531.44, represents the amount by which petitioner's depletable base for the two

oil properties has been erroneously reduced in determining the amount of depletion allowable for the years 1919 and 1920.

PRAYERS FOR RELIEF.

The petitioner prays that this Board may determine that the amount of $170,877.24 representing legal expenses paid by the petitioner during the year 1919 in connection with an action for an accounting relative to petitioner's Coyote Oil property constitutes an allowable deduction for the year 1919.

The petitioner further prays that this Board may determine that the amount of $1,200,000 representing damages paid during the year 1919 in connection with an accounting relative to petitioner's Coyote Oil property constitutes an allowable deduction for the year 1919.

The petitioner further prays that if this Board determine that the above-named payments represent capital expenditures, it may determine that the said payments in the total amount of $1,370,877.24 together with the amount of $32,901.34 representing legal expenses paid during the year 1918 in connection with an action for an accounting relative to petitioner's Coyote Oil property, should be amortized over the remaining life of petitioner's Coyote Oil property on the basis of the number of barrels of recoverable oil in said property at December 31, 1918.

The petitioner further prays that this Board may [13] determine that the capital sum return-

able through depletion of petitioner's Whittier Oil property and Coyote Oil property should not be reduced by the amounts of $656,192.48 and $4,517,402.70 respectively, in determining the unit of depletion sustained by the petitioner on oil produced from the said properties during the years 1919 and 1920.

The petitioner further prays that this Board may determine that the depletable base of petitioner's Whittier and Coyote Oil properties should be reduced only by the depletion legally allowable as a deduction from petitioner's taxable income for the period March 1, 1913, to December 31, 1915, in lieu of the depletion determined by the Commissioner to have been sustained on the March 1, 1913, value and subsequent costs.

The petitioner further prays that this Board may duly hear and determine this appeal and reduce petitioner's taxable income by any other deductions to which petitioner is entitled under the Revenue Act of 1918 or subsequent revenue acts.

GEORGE E. HOLMES,
RANDOLPH E. PAUL,
CHARLES B. McINNIS,
Attorneys for Petitioner,
15 William Street,
New York, N. Y.
THOMAS R. DEMPSEY,
Attorney for Petitioner,
508 Security Bldg.,
Los Angeles, California.

ELMONT B. HAZARD,
Attorney for Petitioner,
1039 Woodward Bldg.,
Washington, D. C.
BRADNER W. LEE, Jr.,
KENYON F. LEE,
Attorneys for Petitioner,
Herman W. Hellman Bldg.,
Los Angeles, California.

[14] State of California,
County of Los Angeles,—ss.

Geo. E. Foley, being duly sworn, deposes and says that he is Vice-Pres. of the Murphy Oil Company of Whittier, California, the taxpayer named in the foregoing petition; that he has read the said petition and that the facts set forth therein are true to the best of his knowledge, information and belief.

(Signed) GEO. E. FOLEY.

Sworn to before me this 25th day of Aug., 1928.
[Notarial Seal]

(Signed) TEMPERANCE R. BAILY,
Notary Public in and for the County of Los Angeles, State of California.

[15] EXHIBIT No. 1.

TREASURY DEPARTMENT,
Washington.

Feb. 6, 1926.

Office of
Commissioner of Internal Revenue.
IT:CA:2555–8–60D.
Murphy Oil Company,
Whittier, California.

Sirs:

The determinataion of your income tax liability for the years 1919 and 1920, pursuant to an examination of your books of account and records, as set forth in office letter dated December 12, 1925, disclosed a deficiency in tax amounting to $398,400.53, as shown in the attached statement.

In accordance with the provisions of Section 274 of the Revenue Act of 1924, you are allowed 60 days from the date of mailing of this letter within which to file an appeal contesting in whole or in part the correctness of this determination. Any such appeal must be addressed to the United States Board of Tax Appeals, Washington, D. C., and must be mailed in time to reach that Board within the 60-day period.

Where a taxpayer has been given an opportunity to appeal to the Board of Tax Appeals and has not done so within the 60 days prescribed and an assessment has been made, or where a taxpayer has appealed and an assessment in accordance with the final decision on such appeal has been made, no

claim in abatement in respect of any part of the deficiency will be entertained.

If you acquiesce in this determination and do not desire to file appeal, you are requested to sign the inclosed agreement consenting to the assessment of the deficiency and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:CA:2555–8–60D. In the event that you acquiesce in a part of the determination, the agreement should be executed with respect to the items agreed to.

Respectfully,
D. H. BLAIR,
Commissioner.

By ————————,
Assistant to the Commissioner.

Inclosures:
Statements,
Agreement—Form A.
Form 882.
MF/3.

[16] Feb. 6, 1926.

IT:CA:2555–8–60D.

STATEMENT.

In re: Murphy Oil Company,
Whittier, California.

Deficiency in Tax.

1919	$ 76,740.20
1920	321,660.33
Total	$398,400.53

1919.

Net income, books.....$910,609.09

Additions:		
Income taxes disallowed in accordance with Article 131, Regulations 45		354,316.20
Donations disallowed in accordance with Article 562, Regulations 45.		1,039.16
Legal costs defending title to oil lands in accordance with Article 293, Regulations 45		170,877.24
Settlement of suit attacking title to oil land in accordance with Article 293, Regulations 45		1,200,000.00
Excessive depreciation in accordance with revised schedules		41.09
Total		$2,636,882.78
Deduct:		
Depletion restored excluded from income account the net adjustment due to revising reserves	$ 231,082.20	
Depletion allowed in accordance with engineer's report	2,072,660.49	2,303,742.69
Net income corrected		$ 333,140.09

MF/3.

[17] Statement.
Murphy Oil Company.

		Invested Capital.
Capital Stock		$2,000,000.00
Less:		
Stock discount in accordance with Section 326, Revenue Act of 1918		150,000.00
Capital stock		$1,850,000.00
Surplus—books	$313,433.28	
Plus:		
Adjustments, corrected balance sheet	150,651.22	
Surplus, corrected balance sheet	$464,084.50	464,084.50
Total		$2,314,084.50

	Invested Capital.	
1918 tax prorated in accordance with Article 845, Regulations 45	$ 69,364.70	
Dividends prorated in accordance with Article 858 Regulations 45	712,986.30	782,351.00
Balance.		$1,531,733.50
Deduction:		
Inadmissibles in accordance with Article 852, Regulations 45		28,474.93
Invested capital—corrected		$1,503,258.57
Excess Profits Credit.		
8% of invested capital		$ 120,260.69
Exemption		3,000.00
Total credits		$ 123,260.69

Net Income.	Credit.	Balance.	Rate.	Tax.
$300,651.71	$123,260.69	$177,391.02	20%	35,478.20
32,488.38		32,488.38	40%	12,995.35
Excess profits tax.....				$ 48,473.55
Net income.....		$333,140.09		
Less:				
Profits Tax..48,473.55				
Exemption ... 2,000.00				50,473.55
Taxable at 10%.....		282,666.54		$ 28,266.65

[18] Statement.

Murphy Oil Company.

Taxable at 10%	$282,666.54	$28,266.65
Total tax		$76,740.20
Tax previously assessed		none
Deficiency in tax		$76,740.20

1920.

Net income—books	$2,981,680.14
Add:	
Donations disallowed in accordance with Article 562, Regulations 45	1,246.59
Depletion claimed	102,692.94
Excessive depreciation in accordance with revised schedule	2,930.84
Total	$2,988,550.51

Deduct:		
1918 income tax credited back, due to the same not paid	$ 354,316.20	
Depletion allowed in accordance with engineer's report	1,689,645.13	2,043,961.33
Net income corrected		$ 944,589.18
Invested Capital.		
Capital stock		$2,000,000.00
Less:		
Stock discounts		150,000.00
Capital stock		$1,850,000.00

MF/3.

[19] Statement.

Murphy Oil Company.

Amount brought forward		$1,850,000.00
Deficit—books	$175,957.63	
Add:		
Adjustments, corrected balance sheets	972,087.68	
Surplus, corrected balance sheets		796,130.05
Total		$2,646,130.05
Deduct:		
1919 taxes prorated in accordance with Article 845, Regulations 45	32,342.16	
Dividends prorated in accordance with Article 858, Regulations 45	347,049.17	379,391.33
Balance		$2,266,738.72

Deduction:	
Inadmissible in accordance with Article 853, Regulations 45	42,320.01
Invested capital corrected	$2,224,418.71
Excess Profits Credit.	
8% of invested capital	177,953.50
Exemption	3,000.00
Total credit	$ 180,953.50

Net income	Credit.	Balance.	Rate.	Tax.
$444,883.74	$180,953.50	$263,930.24	20%	52,786.05
499,705.44		499,705.44	40%	199,882.18
$944,589.18				$252,688.23

Net Income.	Credit.	Balance.	Tax
Net income		$944,589.18	
Profits tax.....	$252,668.23		
Exemption	2,000.00	254,668.23	
Taxable at 10%..		$689,920.95	
Tax at 10%.....			68,992.10
	Total tax.....		$321,660.33

MF/3.

[20] Statement.

Murphy Oil Co.

Amount brought forward.....	$321,660.33
Tax previously assessed.....	none
Deficiency in tax.....	$321,660.33

Balance Sheet—December 31, 1918.

Assets.	Books.	Additions.	Reductions.	Amended.
Cash	86,250.87			$ 86,250.87
Notes Receivable	5,432.29			5,432.29
Accts.	270,730.31			270,730.31
Sundry debtors	538,206.10			538,206.10
Farm products	5,141.15	$684.00(2)		5,825.15
Land	72,426.19			72,426.19
Agricultural land	370,285.06	161,700.70(3)		531,985.76
Equipment	441,331.50			441,331.50
Stock	46,252.21			46,252.21
Bonds	70,830.00			70,830.00
Discount capital stock	———	150,000.00(4)		150,000.00
Taxes overpaid	———	73,001.70(5)		73,001.70
Oil Lands	$1,319,200.70		(6)$1,046,207.84	$262,992.86
	$3,226,086.38			$2,555,264.94

Assets.	Books.	Addition		Reductions.	Amended.
Accrued salaries	833.37				833.37
Accrued payroll	4,955.97				4,955.97
Accounts payable	19,197.70				19,197.70
Reserve for depreciation	63,986.95		(7)	2,206.45	56,193.40
Reserve for depletion	823,679.11	823,679.11	(8)		———
Capital stock	2,000,000.00				2,000,000.00
Surplus	313,433.28				464,084.50
	$3,226,086.38				$2,555,264.94

2. To adjust in accordance with books.
3. To set up corrected values of agricultural land.
4. To set up Stock Discount.
5. To set up tax overpayment in accordance with Article 845, Regulations 45.
6. To adjust in accordance with engineer's report.
7. To correct reserve in accordance with revised schedule.
8. Adjusted in asset account.

MF/3.

[21] Statement
Murphy Oil Co.

Balance Sheet—December 31, 1918.

Assets	Books	Additions	Reductions	Amended
Cash	$ 84,747.89			$ 84,747.89
Notes Receivable	2,268.87			2,268.87
Accts.	187,675.13			187,675.13
Sundry debtors	30,623.59			30,623.59
Inventories:				
Packing House	19,714.20			19,714.20
Farm products	1,449.87	684.00 (2)		2,133.87
Land	72,306.19			72,306.19
Agricultural land	370,285.06	161,700.70 (3)		531,985.76
Oil lands	1,319,200.70	(4)	193,908.53	1,125,292.17
Equipment	489,142.28			489,142.28
Stocks	50,309.15			50,309.15
Bonds	90,880.00			90,880.00

Assets	Books	Additions	Reductions	Amended
Cancelled checks	42.00			42.00
Discount on capital stock		150,000.00 (5)		150,000.00
		263,179.96 (6)		263,179.96
Taxes overpaid				
Oil land, March 1, 1913, appreciation	33,673,817.83	(7)	33,673,817.83	
	$36,392,462.76			$3,100,301.06

Liabilities.	Books.	Additions.		
Accrued salaries	$ 833.37			833.37
Accrued payroll	4,965.16			4,965.16
Accounts payable	202,147.11			202,147.11
Reserve for depreciation	94,060.01	(8)	2,165.36	96,225.37
Reserve for depletion on cost	592,596.91	592,596.91 (9)		
Reserve for depletion on appreciation	13,554,444.43	(10)	13,554,444.43	

Liabilities.	Books.	Additions.		
Capital stock	2,000,000.00			2,000,000.00
Earned surplus	———			796,130.05
Deficit	175,957.63			———
Surplus by appreciation of oil land	20,119,373.40			———
	$36,392,462.76	———	———	$3,100,301.06

MF/3.

[22] Statement.

Murphy Oil Co.

2 and 3. As previously explained for the balance sheet—December 31, 1918.

4. Adjusted in accordance with engineer's report.

5 and 6. As adjusted in previous years.

7. Eliminated as balance sheet revised on cost.

8. As explained in previous year.

9. Adjusted through asset account.

10 and 11. Eliminated balance adjusted on cost.

Balance Sheet—December 31, 1920.

Assets.	Books.	Additions.	Reductions.	Amended
Cash	85,600.96			85,600.96
Notes receivable	2,193.95			2,193.95
Accts.	245,109.65			245,109.65
Sundry debtors	206,741.57		177,158.10	29,556.47
Inventories:				
Packing	25,331.85			25,331.85
Farm Products	3,539.45	684.00		4,223.45
Land	72,306.19			72,306.19
Agricultural land	370,285.06	161,700.70		531,985.76
Oil lands	1,319,200.70		608,757.17	710,443.53
Equipment	517,468.99			517,468.99
Stocks	50,309.15			50,309.15
Bonds	380,880.00			380,880.00

Assets.	Books.	Additions.	Reductions.	Amended
Appreciation—oil lands..	$33,673,817.83		33,673,817.83	———
Taxes overpaid	———	9,281.66		9,281.66
Discount on capital stock	———	150,000.00		150,000.00
	$36,952,758.35			$2,814,691.61

MF/3.

[23] Statement.

Murphy Oil Co.

Balance Sheet—December 31, 1920 (Continued).

Liabilities.	Books.	Additions.	Reductions.	Amended
Accrued salaries	$ 1,000.00			$ 1,000.00
Accrued payroll	4,880.54			4,880.54
Accounts payable	20,382.10			20,382.10
Reserve for depreciation	131,665.52	$ 765.48		130,900.04
Reserve for depletion cost	695,289.85	695,289.85		———

Liabilities.	Books.	Additions.	Reductions.	Amended
Reserve for depletion on appreciation	16,133,709.03	16,133,709.03		
Capital stock	2,000,000.00			$2,000,000.00
Earned surplus	425,722.51			657,528.93
Surplus by appreciation	17,540,108.80	17,540,108.80		
	$36,952,758.35			2,814,691.61

Adjustments are as explained in the prior balance sheets.

Analysis of Surplus.

Surplus, December 31, 1918		$ 464,084.50
Net income		333,140.09
Realized appreciation		1,564,082.56
		$2,361,307.15
Dividends	$1,400,000.00	
1918 Taxes	354,316.20	
	1,039.16	1,755,355.36
Balance		$ 605,951.79
Overpayment taxes		190,178.26
Surplus, December 31, 1919		796,130.05
Net income, 1920		944,589.18
Realized appreciation		1,274,796.49
		$3,015,515.72

Dividends	$2,280,000.00	
Donations	1,246.59	2,281,246.59
Balance		$ 734,269.13
Taxes corrected		76,740.20
Surplus, December 31, 1920.		$ 657,528.93

MF/3.

[24] Depletion has been allowed in accordance with the attached revised schedule, based upon a ruling by the Bureau that the judgment and legal costs represent a part of the cost of the property and not additional capital items to be added to the March 1, 1913, value in accordance with Section 326 of the Revenue Act of 1916.

You are advised that your protest submitted by your representatives and received in this office January 12, 1925, has been carefully considered and it is deemed that a conference is not advisable at this time.

Relative to items one and two you are informed that the Commissioner has not acquiesced in these decisions and consequently cannot be allowed. Item three has been adjusted in accordance with your briefs.

Payment of the deficiency in tax should not be made until a bill is received from the Collector of Internal Revenue for your district and remittance should then be made to him.

Enclosures:

Revised depletion schedule.

[Seal] B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

Now, Feb. 20, 1931, the foregoing Second Amended Petition certified from the record as a true copy.

MF/3.

[25] Filed Sep. 25, 1928. United States Board of Tax Appeals.

United States Board of Tax Appeals.

DOCKET No. 14,440.

MURPHY OIL COMPANY,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ANSWER TO SECOND AMENDED PETITION.

The Commissioner of Internal Revenue, by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, for answer to second amended petition of the above-named taxpayer admits and denies as follows:

I, II, III. Admits the allegations in paragraphs I, II and III.

V, (1). Admits the allegations in paragraph V, (1).

V, (2), (3), (4),(5), (6), (7), (8), (9), (10), (11), (12), (13). For lack of information upon which to base a belief, denies the allegations in paragraphs V, (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12) and (13).

V, (14), (15). Does not regard as material and therefore denies the allegations in paragraphs V, (14) and (15).

V, (16). Admits that the Commissioner failed to amortize the amount of $32,901.34 over the remaining life of the petitioner's Coyote oil property. Denies the remaining allegations in paragraph V, (16).

V, (17). Admits that the petitioner treated the amount of $1,370,877.24 as a loss during the calendar year 1919 in arriving at the net income reported on its income and profits tax return for the year 1919. Denies the remaining allegations in paragraph V, (17).

V, (18). Admits the allegations in paragraph V, (18).

V, (19). Admits that the Commissioner did not amortize the amount of $1,370,877.24 over the re-
[26] Docket No. 14,440.
maining life of the petitioner's Coyote oil property. Denies the remaining allegations in paragraph V, (19).

V, (20). Denies the allegations in paragraph V, (20) and says that in arriving at the deficiency shown in the 60-day letter dated February 6, 1916, the Commissioner determined that the petitioner's share of oil reserves in the Coyote oil property at December 31, 1918, amounted to 5,051,424 barrels and not 5,044,673 barrels as alleged.

V, (21). Admits the allegations in paragraph V, (21).

V, (22). Denies the allegations in paragraph V, (22), and says that in arriving at the deficiency shown in the 60-day letter dated February 6, 1926, the Commissioner determined that the petitioner's share of the oil reserves in the Coyote oil property

at December 31, 1919, amounted to 3,406,527 barrels and not 3,399,776 barrels as alleged.

V, (23). Admits the allegations in paragraph V, (23).

V, (24). For lack of information upon which to base a belief, denies the allegations in paragraph V, (24).

V, (25). Admits that the Commissioner determined that $326,404.82 of the alleged bonus represented an alleged payment for physical property and that the remaining amount of $5,173,595.18 represented an alleged bonus on the two oil properties. Denies the remaining allegations in paragraph V, (25).

V, (26). Admits that the Commissioner further determined that $656,192.48 of the said amount of $5,173,595.18 represented an alleged bonus on the petitioner's Whittier oil property and that the remaining amount of $4,517,402.70 represented an alleged bonus on the petitioner's Coyote oil property. Denies the remaining allegations in paragraph V, (26).

[27] Docket No. 14,440.

V, (27). Admits that the Commissioner deducted from the capital sum returnable through depletion of the petitioner's Whittier oil property, the said amount of $656,192.48 representing the so-called bonus applicable to the said Whittier oil property, in determining the unit of depletion sustained by the petitioner on the amount of oil procured from the Whittier oil property for the years 1919 and 1920.

Denies the remaining allegations in paragraph V, (27).

V, (28). Admits that the Commissioner deducted from the capital sum returnable through depletion of the petitioner's Coyote oil property, the said amount of $4,517,402.70 representing the so-called bonus applicable to the said Coyote oil property, in determining the unit of depletion sustained by the petitioner on the amount of oil produced from the Coyote oil property for the years 1919 and 1920. Denies the remaining allegations in paragraph V, (28).

V, (29), (30). Admits the allegations in paragraph V, (29) and (30).

V, (31), (32), (33). Denies the allegations in paragraphs V, (31), (32) and (33).

Denies generally and specifically each and every allegation in taxpayer's second amended petition not hereinbefore expressly admitted, qualified or denied.

WHEREFORE, it is prayed that the petition be denied.

(Signed) C. M. CHAREST,
General Counsel,
Bureau of Internal Revenue.

Of Counsel:

JOHN D. FOLEY,
Special Attorney,
Bureau of Internal Revenue.

jdf/9/21/28.

Now, Feb. 20, 1931, the foregoing Answer to Second Amended Petition certified from the record as a true copy.

[Seal] B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

[28] A true copy.

[Seal] Teste: B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

United States Board of Tax Appeals.

DOCKET No. 14,440.

Promulgated March 30, 1929.

MURPHY OIL COMPANY,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

1. Legal expenses and a payment in compromise of a suit alleging petitioner acquired oil properties by fraudulent means and seeking to recover the properties, together with an accounting for profits obtained from dealings with such properties, were not personal expenses, nor were they deductible as business expenses, for that portion allocable to the defense of the claim against title was a capital expenditure.

2. The claim for an accounting was a distinct claim involving a distinct group of assets

and that portion of the expenses and compromise payment allocable to the defense and settlement of such claim, if a capital expenditure, has nothing to do with the oil properties and should not be added to the depletable capital account thereof, and, in the absence of evidence permitting a proper allocation of the expenses and payment between the two claims, no allowance may be made as a business expense or as additional depletion.

3. A cash bonus payment by the lessee for an oil and gas lease represents taxable income and having no relation to exhaustion of resources does not reduce the depletable base of the lessor.

4. The depletable base determining the depletion allowance under the 1918 Act is reduced by the exhaustion actually sustained in prior years and not by the amount of the deductions allowable for prior years under prior Revenue Acts. Thompson Oil & Gas Company followed.

RANDOLPH E. PAUL, Esq., VALENTINE B. HAVENS, Esq., CHARLES B. McINNIS, Esq., THOMAS R. DEMPSEY, Esq., and A. CALDER MACKAY, Esq., for the Petitioner.

JOHN D. FOLEY, Esq., and LLOYD W. CREASON, Esq., for the Respondent.

[29] This proceeding results from a determination of deficiencies in income and excess profits taxes for the calendar years 1919 and 1920 in the amounts of $76,740.20 and $321,660.33, respectively, all of

which are in controversy. The errors assigned are as follows:

(1) The respondent erred in refusing to allow, as a deduction from gross income for the year 1919, the sum of $1,200,000 paid in that year in settlement of a suit for an accounting brought against the petitioner relative to its Coyote Oil properties.

(2) The respondent erred in refusing to allow as a loss deduction for the year 1919 the sum of $170,877.24 paid in that year as legal expenses in defending an action against the petitioner for an accounting relative to a portion of its oil properties, to wit, its Coyote Oil properties.

(3) The respondent further erred in determining the legal expenses incurred in 1918 and 1919 and the amount of the compromise payment in 1919 in connection with such suit constitute capital expenditures, and at the same time failing to determine that such amounts should be amortized over the remaining life of the said oil properties.

(4) The respondent erred in deducting from the capital sum returnable through depletion of the petitioner's Coyote Oil property, an amount of $4,517,-402.70, representing a bonus received by the petitioner upon the leasing of the said oil property, in computing the amount of depletion sustained by the petitioner in connection with the said Coyote Oil property for the years 1919 and 1920.

[30] (5) The Commissioner erred in reducing petitioner's depletable base for both the Whittier and Coyote Oil properties by an amount alleged to represent depletion sustained on the March 1, 1913,

value and subsequent cost of the said properties during the period from March 1, 1913, to December 31, 1915, whereas he should have reduced petitioner's depletable base by the amount of depletion which petitioner was legally entitled to take as a deduction in determining its taxable income for the said period from March 1, 1913, to December 31, 1915.

FINDINGS OF FACT.

Petitioner corporation was organized on or about August 18, 1904, under the laws of California and has its home office at Whittier, California. It took over from Simon J. Murphy certain oil properties among which was an oil and gas lease on certain land situated in California and owned by Domingo Bastanchury. The petitioner, through Edmund W. Bacon, one of its officers and its agent, purchased 2,240 acres of the land (hereinafter referred to as the Coyote properties) covered by such lease for $35 per acre, or $78,400, the deed to Murphy being dated December 15, 1904, and the deed from Murphy to petitioner being dated January 9, 1905. The purchase agreement involved also a cancellation of the oil and gas lease and the leasing of the surface rights to Bastanchury for 10 years for grazing purposes.

[31] At the time Bacon purchased property a well (hereinafter referred to as well No. 1) had been drilled to considerable depth under the lease, drilling operations had ceased, and the well had been capped. Drilling operations were resumed after the land was acquired by petitioner.

On August 26, 1918, after petitioner had leased the Coyote properties to the Standard Oil Company as set out below, Maria Bastanchury, as administratrix of Domingo Bastanchury, filed a complaint in the Superior Court of Los Angeles County against petitioner and Bacon. The complaint alleged that petitioner and Bacon had fraudulently misrepresented to the Bastanchurys that Well No. 1 was a dry hole, that indications of the presence of oil were destroyed or covered up to prevent the Bastanchurys from learning of their existence, and, that petitioner was about to abandon the lease. It was further alleged that no grounds for suspecting fraudulent misrepresentations had been discovered by the Bastanchurys until shortly before the filing of the complaint, that the misrepresentations had been made to induce complainants to sell the property for far less than its real worth; and that the Bastanchurys relied upon the misrepresentations in canceling the lease and selling the land.

The bill prayed that the defendants be required to account to plaintiff for all moneys or other things of value (in excess of $78,400, the price paid) obtained by them from their dealings with the Coyote properties, or from their dealings with the proceeds from the sale or operation thereof. It was also prayed that the defendants be required to assign and transfer to plaintiff all rights to receive such moneys [32] and things of value in the future; that a receiver be appointed to collect and receive from the then lessee, the Standard Oil Company, for the benefit of the plaintiff that which such lessee has become obligated to pay defendants as respects

such properties; and such other and further relief as the Court may deem meet and agreeable to equity, the premises considered, and for costs.

The answer filed late in 1918 denied all of the allegations set forth in the bill. The answer alleged that plaintiff, or her deceased husband, his heirs, devisees and personal representatives, had knowledge or notice by 1906 of all of the facts alleged to indicate fraud; that defendant Bacon had received any portions of the moneys or things of value derived from dealing with the land; that the land when purchased had a value in excess of $87,400. Other defenses set up in the answer include the statute of limitations (secs. 318, 319, 338, 343 and 353, Code of Civil Procedure of the State of California); laches; adverse possession and user since January of 1905; drilling and development of the property (with the knowledge and acquiescence of the Bastanchurys) by petitioner at heavy expense until the property was leased in 1913, which greatly enhanced the value thereof; transfers of stock of petitioners to purchasers for value without notice of the alleged fraud, etc., and alleged the relief prayed for would be unequitable and that plaintiff's remedy, if any, was for damages.

Legal expenses incurred during the year 1918 amounted to [33] $32,151.77. During the year 1919, further legal expenses totaled $170,877.24. During the latter year judgment in the amount of $1,200,000, as damages for the alleged wrongful acts, was entered against, and paid by, petitioner in such suit pursuant to an agreement between the par-

ties in compromise settlement. Petitioner, after investigation, had concluded that the action had no merit, but agreed to pay the amount agreed upon in compromise rather than continue the litigation, as the anticipated cost thereof would have equalled the amount of the settlement. Petitioner also deemed it advisable to avoid the disagreeable notoriety accompanying the suit. An instrument was executed by the Bastanchurys, including all the heirs and legatees, releasing petitioner, and all other persons or corporations claiming to own any interest in the land conveyed by the deed of December 15, 1904, from any further causes or actions for damages or rights on account of the alleged fraudulent acts.

The legal expenses incurred in 1918 were deducted as an expense in that year. Those incurred in 1919, together with the $1,200,000 paid in final settlement were deducted as expenses of that year. The deductions claimed were disallowed.

The respondent failed or refused to treat such legal expenses and the amount paid in compromise settlement as capital amortizable over the remaining life of the oil properties.

By an instrument dated December 1, 1913, petitioner leased certain oil properties, known as the Whittier and Coyote oil properties, to the [34] Standard Oil Company of California for 40 years, and by the same instrument, sold to that company specified personal property, including fixtures, appurtenances, tools, machinery and equipment, which were at that time located on or used in connection

with such oil properties. The instrument recited cash consideration of $10 (and other consideration, the receipt of which was acknowledged, which a stipulation shows to have totaled $1,500,000) and additional payments to be made from time to time. The due date, the actual date of payment and the amount of such additional payments may be tabulated as follows:

Due Date.	Date Paid.	Amount.
April 31, 1914	April 1, 1914	$1,000,000
March 31, 1915	March 1, 1915	250,000
June 31, 1915	June 1, 1915	250,000
Sept. 31, 1915	Sept. 1, 1915	250,000
Dec. 31, 1915	Dec. 31, 1915	250,000
June 31, 1916	July 13, 1916	500,000
Dec. 31, 1916	Dec. 1, 1916	500,000
Dec. 31, 1917	Dec. 1, 1917	500,000
Dec. 31, 1918	Dec. 1, 1918	500,000
		$4,000,000

The $1,500,000 paid down brings the total of such payments to $5,500.000. Petitioner also was to receive for the first five years a royalty of one-fourth of all oil produced in each year in excess of 730,000 barrels, and after the five-year period the royalty reserved amounted to one-fourth of the oil produced. The gas royalty agreed upon was a payment of two (2) cents for each one thousand cubic feet of gas saved and sold.

Of the $5,500,000 payments, the respondent determined that [35] $326,404.82 represented payment for the personal properties sold and the remainder

of $5,173,595.18 represented a bonus payment on the two properties. The respondent allocated such total bonus payment, $656,192.48 to the Whittier property and $4,517,402.70 to the Coyote property, and deducted the amount of such bonuses from the capital sums returnable through depletion in determining the unit of depletion sustained in 1919 and 1920, the years in controversy. Depletion deductions were based on March 1, 1913 value.

The gross production of the two properties in barrels of oil and the value thereof at the mouth of the wells from March 1, 1913, through the year 1915, is as follows:

During Period.	Coyote. Barrels.	Coyote. Amount.	Whittier. Barrels.	Whittier. Amount.
3–1–13 to 11–30–13	344,094.63	$292,480.44	221,178.85	$133,968.52
12–1–13 to 12–31–13	6,697.47	5,744.52	–	–
Cal. year 1914.	151,424.90	127,000.42	5.50	3.30
Cal. year 1915.	322,064.60	278,124.21	16,943.54	10,166.13
Totals	824,281.60	$703,349.59	238,127.89	$144,137.95

The depletion determined by the respondent to have been sustained by the petitioner from March 1, 1913, through the year 1915, is as follows:

Period 3–1–13 to 12–31–13.		1914	1915.	Total
Whittier	$74,048.17	$17,738.65	$38,021.95	$129,808.75
Coyote	183,327.41	135,572.08	306,749.76	625,649.25
Total	$257,375.58	$153,310.73	$344,771.69	$755,458.00

The respondent reduced petitioner's depletable base by the above amount of $755,458 in determining the depletion allowable for the years 1919 and 1920.

[36] The respondent determined that the amount of oil produced from petitioner's share of the Coyote Oil property during the years 1919 and 1920 was 1,644,897 barrels and 1,340,237 barrels, respectively.

The respondent determined the oil reserves in the Coyote property at December 31 of 1918 and 1919 amounted to 5,051,424 and 3,406,527 barrels, respectively.

OPINION.

SIEFKIN.—The issues raised in the first three allegations question the respondent's determination that the cost of the litigation in question and the payment made in compromise are neither deductible expenses nor capital cost which may be amortized over the remaining life of the properties. Apparently such determination was based on the conclusion that such expenditures represented personal expenses.

We think such conclusion unsound. The act complained of was committed, if at all, in the course of a business transaction. Kornhauser vs. United States, 276 U. S. 145, citing with approval an administrative ruling of the Bureau where expenses of a suit for malpractice were allowed as a business expense deduction by a physician. In this case the suit brought was in no sense a prosecution for a crime or an attempt to impose a penalty. The

only remedy sought was a restitution of the property, together with income derived therefrom in the *interim.* See Consolidated Mutual Oil Co., 2 B. T. A. 1067; and Frederick McLean Bugher et al., 9 B. T. A. 1155.

[37] We cannot agree, however, with petitioner's contention that the expenses and payment under discussion were deductible as business expenses or losses. The complaint filed in the suit alleged fraud and the relief prayed for was an accounting and that petitioner be required to assign and transfer to complainant all rights to receive moneys and things of value derived from the property in the future. That is, the prayer asks for restoration of the property and all past income therefrom in excess of the consideration paid.

It should be noted at this point that the action was brought to recover two distinct classes of assets. One such class of assets was the oil properties as they existed at the time the suit was instituted. Petitioner recognized that the complaint questioned its title to the property and in answer to the prayer for restoration asserted such relief to be inequitable, and that complainant's remedy, if any, was for damages. The other asset (the accumulated earnings resulting from petitioner's operation or production in years prior to the beginning of the suit) was no longer a part of such oil properties as they had been severed from the realty. They formed a distinct group of assets to which claim was made in the action. It should, therefore, be borne in mind that, though both claims grew out of the alleged

fraud, there were, nevertheless, two distinct claims asserted against two different groups of assets.

To the extent that the expenses and payment were incurred and made in defense of the claim against the oil properties they were capital expenditures. We have repeatedly held that the cost of defending title, [38] whether in the form of legal fees or compromise payments, is a capital expenditure representing additional cost of the property. Lincoln L. McCandless, 5 B. T. A. 1114; Gopher Granite Co., 5 B. T. A. 1216; Seletha O. Thompson, 9 B. T. A. 1342; Frederick McLean Bugher, *supra;* North American Oil Consolidated, 12 B. T. A. 68; Phoenix Development Co., 13 B. T. A. 414. The decisions in Kornhauser vs. United States, *supra,* and The Superheater Co., 12 B. T. A. 5, which are relied upon by the petitioner, are not in conflict with those cases. In the Superheater case the contemplated litigation grew out of an action of the board of directors, acting as such. The claim settled did not involve title. In the Kornhauser case the legal expenses were incurred to contest a claim against income received, differing fundamentally from the ordinary attack on title, even though the income in question consisted of shares of stock.

In view of such conclusion we must reject petitioner's contention that the total deductions claimed should be allowed. We cannot allow the total and it would be idle for us to further consider whether any part of such total (i. e., that portion allocable to the defense and settlement of the claim for accounting) is allowable as the record furnishes no

basis for the apportionment of the whole among the several claims defendant or settled.

The petitioner's contention that if the litigation and settlement costs are not deductible they must represent capital expenditures to be added to the amortizable capital value, must likewise be rejected. That portion of such costs which is properly allocable to the defense [39] and settlement of the accounting claim has nothing to do with title to the property or its future depletion. Assuming that such costs were capital expenditures they relate to a claim against assets or moneys severed from the oil properties. Frederick McLean Bugher et al., *supra.* Undoubtedly that portion of such costs which we have held allocable to defense and settlement of the claim against the properties should increase the amortizable capital value but we are again confronted with the fact that there is nothing in the record to permit a proper allocation to determine that amount. Accordingly, we must affirm the respondent's action on the points covered by the first three allegations of error.

The next error assigned is the reduction of depletable capital by the amount of the bonus received by the lessor as part consideration upon leasing the properties to the Standard Oil Company of California in December of 1913. The respondent determined that $5,173,595.18 of the $5,500,000 payments received represented such a bonus, and petitioner finds no fault with such allocation. Petitioner complains only of the admitted reduction of

the capital base for depletion purposes on account thereof.

The respondent's present contention as set forth in his brief is as follows:

> The Commissioner made an error of method in requiring the bonus of $656,192.48 on the Whittier property and the bonus of $4,517,595.18 on the Coyote property to be deducted as of December 1, 1913, from the capital sum returnable through depletion. On November 13, 1926, T. D. 3938 C. B. V. 2, p. 117, was promulgated amending Article 215 of Regulations 45 (1920 Edition) to read as follows:
>
> [40] 'Depletion—Adjustments of accounts based on bonus or advanced royalty.—(a) Where a lessor receives a bonus in addition to royalties, there shall be allowed as a depletion deduction in respect of the bonus an amount equal to that proportion of the cost or value of the property on the basic date which the amount of the bonus bears to the sum of the bonus and the royalties expected to be received. Such allowance shall be deducted from the amount remaining to be recovered by the lessor through depletion, and the remainder is recoverable through depletion deductions on the basis of royalties thereafter received.'
>
> While the Commissioner made an error of method in deducting from the depletion basis the whole amount of the bonuses as of December 1, 1913, it does not follow that the Commissioner's computation of the depletion basis is

incorrect. There is nothing in the record of this case to show what royalties were on December 1, 1913, expected to be received over the lives of the leases. It is entirely possible that in the interval between December 1, 1913, and December 31, 1918, royalties expected on December 1, 1913, to be received. As to this point the taxpayer must fail for lack of proof.

The respondent confesses error to the extent that he failed to follow the regulation. It remains for us to test the validity of the rule therein promulgated. In Nelson Land & Oil Co., 3 B. T. A. 315, we made it clear that, in our opinion, such a bonus received by a lessor was not a return of capital but is an advance rental or royalty and is taxable as income. That case was followed in R. H. Hazlett, 10 B. T. A. 332, and we are not cited and have been unable to find any authority to the contrary. See also Henry L. Berg, 6 B. T. A. 1287; John T. Burkett, 7 B. T. A. 560; D. R. McDonald, 7 B. T. A. 1078; and R. H. Hazlett, *supra,* in which we held that such bonuses were not gains derived from the sale of "capital assets" under the capital gain provisions of the 1921 Act.

[41] The bonus payment in the instant case was a part of the consideration paid for the lease. While expected production undoubtedly was considered in fixing the amount of the bonus, it is elementary under the laws governing such agreements that its payment did not, in anywise, depend upon, or relate to, production. The lessee's liability therefor was fixed by the terms of the contract. On the

other hand the operation of the principal of depletion depends upon exhaustion of resources through production—i. e., the recovery of capital through its conversion from the form of oil resources or reserves into marketable products or the equivalent received for such product. Under such principal the depletion allowance for the year or years of the bonus payments can only be measured by reference to the oil produced. If, as we have pointed out, the bonus is income, no part of which represents recovery of capital, it follows that any depletion allowance against such income is a departure from the depletion concept. The regulation relied on by the respondent is clearly such a departure. While it might in some cases at least produce a more equitable result the statutory allowance may not be so varied by administrative regulation.

It will be noted that the facts referred to by respondent in the last paragraph of the excerpt from his brief are essential only to the application of the rule laid down in the regulation. On the other hand the respondent admits that he reduced the depletable base by the amount of the bonus (a known quantity) and we have held as a matter of law that [42] no part of such bonus reduces such base. We can, on the facts presented, determine such action was erroneous. To correct such error we need only require the restoration of the amount subtracted, and it is so ordered.

The question raised by the last allegation was considered in Thompson Oil and Gas Company, 15 B.

T. A. 993, and decided adversely to the contention made by the petitioner herein.

Reviewed by the Board.

Judgment will be entered under Rule 50.

MILLIKEN did not participate.

LANSDON, PHILLIPS, GREEN and MURDOCK dissent.

Now, Feb. 20, 1931, the foregoing Findings of Fact and Opinion certified from the record as a true copy.

[Seal] B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

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[43] United States Board of Tax Appeals.

DOCKET No. 14,440.

MURPHY OIL COMPANY,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION.

The Board having promulgated its opinion in the above-entitled proceeding on March 30, 1929, and the petitioner having duly submitted its notice of settlement and recomputation under rule 50, which was set down and called for hearing on January 15, 1930, and it appearing that said recomputa-

tion, showing no deficiencies for the years 1919 and 1920, was uncontested by the respondent, it is

ORDERED AND DECIDED: That there are no deficiencies for the years 1919 and 1920.

(Signed) LOGAN MORRIS,
Member, U. S. Board of Tax Appeals.

Entered Jan. 17, 1930.

A true copy.

[Seal] Teste: B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

Now, Feb. 20, 1931, the foregoing Decision certified from the record as a true copy.

[Seal] B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

---

[44] Filed Jul. 15, 1930. United States Board of Tax Appeals.

United States Circuit Court of Appeals for the Ninth Circuit.

No. ——.

Term, 1930.

MURPHY OIL COMPANY, a Corporation,
Petitioner,

against

ROBERT H. LUCAS, Commissioner of Internal Revenue,
Respondent.

PETITION FOR REVIEW OF DECISION OF THE UNITED STATES BOARD OF TAX APPEALS.

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

The Murphy Oil Company in support of this, its petition, filed in pursuance of the provisions of Section 1001 of the Act of Congress approved February 26, 1926, entitled "The Revenue Act of 1926," as amended by Section 605 of the Act of Congress approved May 29, 1928, entitled "The Revenue Act of 1928," for the review of the decision of the United States Board of Tax Appeals promulgated March 30, 1929, a final order of determination having been entered January 17, 1930, respectfully shows to this Honorable Court as follows:

[45] I.

STATEMENT OF THE NATURE OF THE CONTROVERSY.

1. BRIEF STATEMENT OF FACTS.

(a) The petitioner was, during the years 1918 and 1919, and still is the owner of certain oil properties in the State of California, ordinarily known as the Whittier and Coyote fields. In connection with one of these fields, the Coyote field, certain litigation was instituted against petitioner in the year 1918 by Maria Bastanchury, the wife of Domingo Bastanchury, from whom petitioner had purchased

the property in 1904. Maria Bastanchury was administratrix with the will annexed of the estate of Domingo Bastanchury and her complaint was filed in the Superior Court, Los Angeles, California. Petitioner defended the suit and it was finally settled, after the petitioner had incurred legal expenses involving in 1918 $32,151.77 and in 1919 $170,877.24, for the sum of $1,200,000. Judgment for the last-mentioned sum was entered against petitioner under date of April 28, 1919. (Assignments of Error 1, 2 and 3, pages 8 and 9.)

(b) Under date of December 1, 1913, petitioner entered into an agreement bearing that date with the Standard Oil Company of California, under which agreement the last-mentioned corporation has since operated the Whittier and Coyote oil properties. Pursuant to the agreement mentioned, the Standard Oil Company paid to the petitioner a one-fourth royalty and a bonus of $5,173,595.18. (Decided by Board in favor of petitioner, page 6.)

[46] 2. STATEMENT OF PROCEEDINGS HERETOFORE HELD.

On April 24, 1926, the petitioner filed with the United States Board of Tax Appeals in pursuance of the provisions of the Revenue Act of 1926, its petition requesting the redetermination of a proposed deficiency in income and excess profits taxes for the calendar years 1919 and 1920 amounting to $398,400.53 ($76,740.20 for 1918 and $321,660.33 for 1919), as shown by the final notice of deficiency previously mailed by the respondent under date of

February 6, 1926. The petitioner subsequently duly filed with the United States Board of Tax Appeals an amended petition under date of April 3, 1928, and subsequently thereto under date of Sept. 20, 1928, duly filed with the United States Board of Tax Appeals a second amended petition as an amendment to and in lieu of the original and first amended petitions.

The petition as finally amended alleged that the petitioner was a corporation organized under the laws of California with its Home Office at Whittier, California, and also alleged that the Commissioner of Internal Revenue in determining the deficiency for the calendar years 1919 and 1920, set forth in his deficiency letter of February 6, 1926, committed errors as follows:

(1) In refusing to allow as a deduction from gross income in computing taxable net income for the year 1919 the sum of $1,370,877.24 paid in that year by petitioner as follows:

> $170,877.24 as legal expense in defending an action for an accounting relative to its Coyote Oil [47] property (the so-called Bastanchury Litigation).
>
> $1,200,000 in settlement of said suit for an accounting.

(2) In determining that the total of $1,370,877.24 paid as aforesaid together with the $32,901.34 paid in 1918 by petitioner as legal expenses in connection with the said suit for an accounting, should not be amortized as a capital expenditure over the remaining life of the Coyote Oil property, if it

were not an allowable deduction in computing taxable net income.

(3) In deducting from the petitioner's capital sum returnable through depletion of its Whittier and Coyote Oil properties to be used in determining the annual depletion allowances or deductions from gross income in computing net income for 1919 and 1920, the amounts respectively of $656,192.48 and $4,517,402.70 representing a bonus received by the petitioner on the leasing of the said oil properties in 1913, the result of said action by the Commissioner being to increase petitioner's taxable net income.

(4) In reducing the capital sum returnable through depletion of said Whittier and Coyote Oil properties to be used in determining the annual depletion allowances or deductions from gross income in computing net income for 1919 and 1920 by an amount alleged to represent depletion of said properties during the period from March 1, 1913, to December 31, 1915, on the basis of the value of said properties on March 1, 1913, and the subsequent cost thereof, whereas the said reduction should have been limited to the amount of depletion the petitioner was legally entitled to take under the income tax law in effect during said period from March 1, 1913, to December 31, 1915.

In short, the Commissioner's alleged errors were directed to a refusal to allow any part of the sums paid either as attorneys' fees or in settlement of the Bastanchury litigation either as a deduction from gross income in the year of payment or as a capital

item to be amortized over the remaining life of the properties in connection with which the payment was made. [48] The Commissioner also reduced the petitioner's capital sum returnable through depletion by the total sum of $5,173,595.18 paid to the company by the Standard Oil Company as a bonus, on the theory that the agreement of December 1, 1913, between the petitioner and the Standard Oil Company was not a lease, but conveyed title to the Standard Oil Company. The depletion allowable under the act of October 3, 1913, in effect from March 1, 1913, to December 31, 1915, was limited to 5% of the gross value at the well of the share of the taxpayer's oil produced during the year. The Commissioner, in determining the amount of depletion allowable to petitioner during the years 1919 and 1920, reduced the depletable base or capital sum returnable through depletion by the greater amount of depletion sustained rather than the limited amount deductible under the income tax act in effect as aforesaid.

On September 21, 1928, the respondent filed with the said United States Board of Tax Appeals its answer to the petition which answer admitted some of the more formal facts and denied a number of the other material facts alleged in the said petition. The answer denied all of the allegations of error asserted in the petitioner's petition to the Board of Tax Appeals.

The cause came on for hearing before the United States Board of Tax Appeals at Washington, D. C., on October 22, 1928. Thereafter on March 30, 1929,

the Board rendered its findings of fact in substantial accord with the facts alleged in the petition, together with an opinion in which it [49] was held as a matter of law that:

"1. Legal expenses and a payment in compromise of a suit alleging petitioner acquired oil properties by fraudulent means and seeking to recover the properties together with an accounting for profits obtained from dealings with such properties, were not personal expenses, nor were they deductible as business expenses, for that portion allocable to the defense of the claims against title was a capital expenditure. (See Allegation of Error 1 above.)

2. The claim for an accounting was a distinct claim involving a distinct group of assets and that portion of the expenses and compromise payment allocable to the defense and settlement of such claim, if a capital expenditure, has nothing to do with the oil properties and should not be added to the depletable capital account thereof, and, in the absence of evidence permitting a proper allocation of the expenses and payment between the two claims no allowance may be made as a business expense or as additional depletion. (See Allegation of Error 2 above.)

3. A cash bonus payment by the lessee for an oil and gas lease represents taxable income and having no relation to exhaustion of re-

sources does not reduce the depletable base of the lessor. (See Allegation of Error 3 above.)

4. The depletable base determining the depletion allowance under the 1918 act is reduced by the exhaustion actually sustained in prior years and not by the amount of the deductions allowable for prior years under prior Revenue Acts." (See Allegation of Error 4 above.)

In (1) and (2) above, the Board advanced the theory or principle that the Bastanchury suit involved two claims against two distinct classes of assets, (1) the Coyote properties themselves, and (2) the accumulated earnings resulting from petitioner's operation of or production from the properties in years prior to the suit, and that the amounts paid as legal expense and in settlement should be allocated in part to each claim. It was [50] held that there was no evidence furnishing a basis of apportionment between the two, and that therefore nothing could be allowed to petitioner either as a deduction in the years of payment or as capital to be amortized over the remaining life of the properties.

In (3) above, the Board decided in favor of the petitioner and in (4) above, it decided against the petitioner.

The final decision and order of redetermination of the Board of Tax Appeals entered January 17, 1930, in accordance with the foregoing opinion and decision of the Board of Tax Appeals resulted in the elimination of the deficiency of $398,400.53 asserted by the respondent in the sixty-day letter

from which petitioner took appeal to the Board of Tax Appeals.

II.

DESIGNATION OF COURT OF REVIEW.

The petitioner, being aggrieved by the said findings of fact, opinion and decision and order, and being a corporation with its principal place of business in the City of Whittier, California, desires a review thereof, in accordance with the provisions of the Revenue Act of 1926, as amended by the Revenue Act of 1928, by the United States Circuit Court of Appeals for the Ninth Circuit, within which Circuit is located the office of the Collector of Internal Revenue to which the said petitioner made its income and profits tax returns for the calendar years 1919 and 1920.

[51] III.

ASSIGNMENT OF ERRORS.

The petitioner, as a basis of review makes the following assignment of errors:

(1) The Board of Tax Appeals erred in holding that the payments of legal expense and settlement, totalling $1,370,877.24 made by the petitioner in connection with the Bastanchury litigation in the year 1919 did not constitute an allowable deduction of their entirety in that year.

(2) If the Board of Tax Appeals did not err as alleged in 1 above, it erred in failing to hold that the payments of $32,151.77 and $1,370,877.24 made by petitioner respectively in the years 1918

and 1919 in settlement of the Bastanchury litigation, and aggregating $1,403,029.01, constituted additional cost of petitioner's Coyote Oil properties to be amortized over the remaining life of the Coyote properties and allowed as a deduction from gross income in computing taxable net income for the calendar years 1919 and 1920.

(3) If the Board of Tax Appeals was correct in its holding that the payments of $32,151.77 and $1,370,877.24 made by petitioner respectively in the years 1918 and 1919 as legal fees in connection with and in settlement of the Bastanchury litigation related to claims against two distinct classes of assets, then (a) the Board erred in its finding that there was not sufficient evidence before it to permit an allocation of such payments between the two claims, and (b) if the evidence before the Board was insufficient to [52] provide a basis for the proper allocation to each of said claims of the aggregate sum paid, the Board erred in failing to set the case down for further hearing and production of such further evidence as might be necessary for such a determination.

(4). The Board of Tax Appeals erred in holding that the petitioner's depletable base for its oil properties should be reduced by the depletion sustained on the March 1, 1913, value that subsequent cost of said properties during the period March 1, 1913, to December 31, 1915, whereas, the Board should have held that petitioner's depletable base should be reduced only by the depletion which the petitioner was legally entitled to take as a de-

duction in determining its taxable income for the said period from March 1, 1913 to December 31, 1915.

WHEREFORE, your petitioner prays that this Honorable Court may review the said findings, opinion, decision and order of the Board of Tax Appeals, and reverse and set aside the same in so far as it relates to the assignments or allocations of error set forth above by petitioner; and the petitioner further prays that in the event that any issue in the case coming before this honorable court on this appeal other than those appealed by petitioner, is so decided by this court as to result in a deficiency against the petitioner the case may be remanded to the Board of Tax Appeals for the taking of further evidence upon the question as to that part of the Bastanchury payments which constituted an allowable deduction [53] in the year of payment and that part which should be added to the cost of petitioner's Coyote properties, or capital returnable through depletion; and petitioner further prays for such other and further relief as the Court may deem proper in the premises and for which your petitioner will ever pray.

RANDOLPH E. PAUL,
Attorney for the Taxpayer,
Shoreham Building,
Washington, D. C.
KENYON F. LEE,
Attorney for the Taxpayer,
Herman W. Hellman Bldg.,
Los Angeles, California.

THOMAS H. DEMPSEY,
Attorney for the Taxpayer,
508 Security Bldg.,
Los Angeles, California.

[54] City of Washington,
District of Columbia,—ss.

Personally appeared before me the subscriber a notary public, in and for the City of Washington, District of Columbia, Randolph E. Paul, who upon being duly sworn according to law, does depose and say that he is attorney for the petitioner above named and that as such he had authority to and did sign the foregoing petition; that he has read the same and that the facts set forth therein are true to the best of his knowledge and belief and that the said petition is filed in good faith.

(Signed) ESTHER W. MARSHMAN,
Notary Public, D. C.

Subscribed and sworn to before me this 12th day of July, 1930.

[Notarial Seal]

(Signed) ESTHER W. MARSHMAN,
Notary Public, Washington, D. C.

[55] Filed July 16, 1930. U. S. Board of Tax Appeals.

To the United States Board of Tax Appeals,
Washington, D. C.

DOCKET No. 14,440.

THE MURPHY OIL COMPANY,
Petitioner,

against

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE.

To C. M. Charest, Esq., Bureau of Internal Revenue, Washington, D. C., Attorney for the Respondent.

Sir: PLEASE TAKE NOTICE that on the 15th day of July, 1930, the undersigned presented to this Board and filed with the Clerk thereof the petition of The Murphy Oil Company, a copy of which is annexed hereto, for review by the United States Circuit Court of Appeals for the Ninth Circuit, of the final order and decision of the Board in the above-entitled proceeding entered upon the records of said Board on the 17th day of January, 1930.

Dated Washington, D. C., July 15, 1930.

RANDOLPH E. PAUL,
Attorney for the Petitioner,
Shoreham Building,
Washington, D. C.

Copy of the within notice and copy of petition for review is hereby accepted this 16th day of July, 1930.

(Signed) C. M. CHAREST,
General Counsel, Bureau of Internal Revenue.

Now, Feb. 20, 1931, the foregoing Petition for Review and Notice of Filing certified from the record as a true copy.

[Seal] B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

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[56] Filed Jan. 31, 1931. United States Board of Tax Appeals.

United States Board of Tax Appeals.

DOCKET No. 14,440.

MURPHY OIL COMPANY,

Petitioner,

against

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the United States Board of Tax Appeals:

You are requested to prepare and transmit to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit a transcript of record in the above-entitled case and to include therein certified copies of the following documents:

1. The docket entries of proceedings before the Board.
2. Second amended petition of the Murphy Oil Company.
3. Answer of the Commissioner of Internal Revenue to second amended petition.
4. Findings of fact and opinion of the Board dated March 30, 1929.
5. Final decision of the Board dated January 17, 1930.

[57] 6. Petition for Review.

7. Notice of filing of petition for review and proof of service.
8. This praecipe.

The foregoing to be prepared, certified and transmitted as required by law and the rules of the United States Circuit Court of Appeals for the Ninth Circuit.

RANDOLPH E. PAUL,
Attorney for Petitioner,
Shoreham Building,
Washington, D. C.

Dated January 30, 1931.

I, this 31st day of January, 1931, accept due personal service of a copy of the foregoing praecipe.

C. M. CHAREST,
Attorney for Respondent.

Now, Feb. 20, 1931, the foregoing Praecipe certified from the record as a true copy.

[Seal] B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

[Endorsed]: No. 6388. United States Circuit Court of Appeals for the Ninth Circuit. Murphy Oil Company, a Corporation, Petitioner, vs. David Burnet, Commissioner of Internal Revenue, Respondent. Transcript of Record. Upon Petition to Review an Order of the United States Board of Tax Appeals.

Filed February 27, 1931.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

No. 6459

United States

Circuit Court of Appeals

For the Ninth Circuit.

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

vs.

MURPHY OIL COMPANY, a Corporation,
Respondent.

Transcript of Record.

Upon Petition to Review an Order of the United States Board of Tax Appeals.

Parker Printing Company, 545 Sansome Street, San Francisco 1-22-31—60

INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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APPEARANCES

For Petitioner:

KENYON F. LEE, ESQ.,
THOS. R. DEMPSEY, ESQ.,
ELMONT B. HAZARD, ESQ.,
GEO. E. HOLMES, ESQ.,
RANDOLPH E. PAUL, ESQ.,
CHAS. B. McINNIS, ESQ.,
J. B. HAVENS, ESQ.,

For Respondent:

JOHN D. FOLEY, ESQ.,
W. F. GIBBS, ESQ.

Docket No. 14440

MURPHY OIL COMPANY,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DOCKET ENTRIES

Mr. Morris 11/9/29.

1926

Apr. 24—Petition received and filed.
May 5—Copy of petition served on Solicitor.
May 5—Notification of receipt mailed taxpayer.
June 24—Answer filed by Solicitor.

Aug. 4—Copy of answer served on taxpayer—assigned to General Calendar.

1927

Feb. 15—Notice of appearance of Elmont B. Hazard as counsel for taxpayer.

1928

Feb. 20—Hearing date set 4/19/28.

Apr. 3—Motion for leave to file amended petition, amendment tendered, filed by taxpayer.

Apr. 5—Hearing set on motion 4/11/28.

Apr. 5—Copy of motion and amendment served on General Counsel.

Apr. 11—Hearing had before Mr. Littleton on taxpayer's motion to amend—granted. Continued to May 16th.

Apr. 11—Ordered motion be granted; case stricken from 4/19/28 to May 16, 1928, entered.

Apr. 14—Answer filed by General Counsel. Copy served 4/19/28.

May 16—Hearing had before Mr. Sternhagen, continued 30 days. Stipulation pending.

May 16—Order of continuance to June 20, 1928 entered.

June 13—Motion to transfer to Reserve Calendar filed by taxpayer.

June 14—Motion granted.

Aug. 17—Motion to set down for hearing filed by General Counsel. Granted Aug. 22, 1928.

Aug. 28—Hearing set Oct. 22, 1928.

Sept. 20—Motion for leave to file second amended petition filed by taxpayer. Amendment tendered.

Sept. 21—Motion granted.

Sept. 22—Stipulation to take depositions filed.

Sept. 24—Copy of motion and amendment served on General Counsel.

Sept. 25—Answer to second amended petition filed by General Counsel. Copy served 9/27. [1*]

1928

Oct. 15—Depositions of Kenyon F. Lee filed (2). Notary served taxpayer. 10/16 copy served on General Counsel.

Oct. 22—Hearing had before Mr. Siefkin—submitted on stipulation. Taxpayer's brief due Dec. 20th.

Oct. 29—Transcript of hearing Oct. 22 filed.

Dec. 19—Motion for extension to Jan. 21, 1929 to file brief filed by taxpayer. Granted 12/20/28.

1929

Jan. 5—Brief filed by General Counsel.

Jan. 21—Brief filed by taxpayer.

Mar. 15—Motion to withdraw original exhibit and substitute copy filed by taxpayer. 3/18/29 granted.

Mar. 30—Findings of fact and opinion rendered—Mr. Siefkin. Judgment will be entered under Rule 50.

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*Page number appearing at the foot of page of original certified Transcript of Record.

Dec. 7—Notice of settlement filed by taxpayer. 12/11/29 copy served on General Counsel.

Dec. 10—Hearing set Jan. 8, 1930 on settlement.

1930

Jan. 8—Hearing had before Mr. Murdock, Division 3, on settlement Rule 50. Continued to Jan. 15, 1930.

Jan. 8—Order of continuance to Jan. 15, 1930 on settlement entered.

Jan. 15—Hearing had before Mr. Morris, Division 14, on settlement Rule 50. Assigned to Mr. Morris, Division 14, for order.

Jan. 17—Decision entered—Logan Morris, Division 14.

July 11—Petition for review to U. S. Circuit Court of Appeals, 9th Circuit, with assignments of error filed by General Counsel.

July 15—Petition for review by U. S. Circuit Court of Appeals (9) with assignments of error filed by taxpayer.

July 16—Proof of service of taxpayer's petition for review filed.

July 17—Proof of service of General Counsel's petition for review filed. (Attorney).

July 28—Proof of service filed by General Counsel.

Sept. 9—Motion for extension to Oct. 31, 1930 to prepare and transmit record, filed by General Counsel.

Sept. 9—Order enlarging time to Oct. 31, 1930 for preparation of evidence and transmission and delivery of record entered.

Sept. 13—Motion for extension to Oct. 31, 1930 to file statement of evidence and certify record filed by taxpayer.

Sept. 15—Order enlarging time to Oct. 31, 1930 for preparation of evidence 9th Circuit, entered.

Oct. 31—Motion for extension to Jan. 31, 1931 to prepare and transmit record filed by General Counsel.

Oct. 31—Motion for extension to Jan. 31, 1931 to prepare and transmit record filed by taxpayer.

Oct. 31—Order enlarging time to Jan. 31, 1931 for petitioner to prepare and transmit record entered.

Oct. 31—Order enlarging time to Jan. 31, 1931 for Commissioner to prepare and transmit record entered.

1931

Jan. 31—Motion for extension to Feb. 28, 1931 to prepare statement and transmit record filed by taxpayer. [2]

Jan. 31—Praecipe with proof of service thereon filed by taxpayer.

Jan. 31—Motion for extension to Feb. 28, 1931 to prepare evidence and transmit record filed by General Counsel.

Jan. 31—Order enlarging time to Feb. 28, 1931 for preparation of evidence and delivery of record entered.

Jan. 31—Order enlarging time to Feb. 28, 1931 for preparation of evidence and transmission and delivery of record entered.

Feb. 28—Motion for extension to April 30, 1931 to prepare statement and transmit record filed by General Counsel.

Feb. 28—Order enlarging time to Mar. 25, 1931 for preparation of evidence and delivery of record entered.

Mar. 25—Praecipe filed by General Counsel.

Mar. 31—Proof of service of praecipe filed. [3]

[Endorsed]: Filed Apr. 24, 1926.

United States Board of Tax Appeals

Docket No. 14440

MURPHY OIL COMPANY,

Petitioner,

against

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION.

The above named petitioner hereby appeals from the determination of the Commissioner of Internal Revenue set forth in his deficiency letter dated February 6th, 1926 and as a basis of such appeal sets forth the following:

1. The taxpayer is a corporation organized under the laws of the state of California, with its home office at Whittier, California.

2. The deficiency letter (a copy of which is attached hereto and made a part of this petition and marked Exhibit "A") was mailed to the taxpayer on February 6th, 1926. The 60 days within which to appeal granted by that deficiency letter was subsequently extended to April 26th, 1926, by the Revenue Act of 1926. [4]

3. The deficiencies asserted in the letter of February 1926 are income and excess-profits taxes for the calendar years 1919 and 1920 amounting to $76,740.20 and $321,660.33 respectively; these entire amounts are in controversy.

4. ASSIGNMENTS OF ERROR.

The determination of taxes contained in the said deficiency letter is based upon the following errors:

(a) The Commissioner has erred in refusing to allow as a deduction in computing net income for the year 1919 the sum of $170,877.24, paid in that year as legal expenses in defending an action against the taxpayer for an accounting, relative to a portion of its oil lands, to wit., its Coyote properties.

(b) The Commissioner has erred in refusing to allow as a deduction in computing net income for the year 1919 the sum of $1,200,000.00 paid in that year as a compromise of a suit for an accounting against the taxpayer relative to its Coyote properties.

(c) The Commissioner has erred in refusing to increase the basis for computing the depletion of the Coyote properties by adding to the basis then

unextinguished by depletion the sum of $1,370,-877.24 representing legal expenses in the amount of $170,877.24 paid in 1919 and the sum [5] of $1,200,000.00 paid in 1919 as a compromise of a suit for an accounting against the taxpayer relative to its Coyote properties.

5. STATEMENT OF FACTS.

The facts on which the taxpayer relies as the basis of this appeal are as follows:

(a) The Murphy Oil Company purchased certain property designated as Coyote Hills from one Domingo Bastanchury by deed dated December 15th, 1904.

(b) Prior to the purchase of the said property the taxpayer and its predecessors in title had leased the property from the said Domingo Bastanchury.

(c) On or about August 26th, 1919, Maria Bastanchury, the widow of the said Domingo Bastanchury and administratrix with the will annexed of his estate, filed an appeal in the Superior Court of Los Angeles County, California, against the Murphy Oil Company and against the individual who in 1904 managed the Company's affairs and properties, claiming that the Murphy Oil Company had discovered oil on the field before it negotiated with him for the purchase of the property.

(d) The Murphy Oil Company employed a number of counsel and took active steps to defend itself.

(e) In its answer to the complaint of the said Maria Bastanchury as administratrix with the will

annexed of the estate of Domingo Bastanchury, the Murphy Oil Company denied [6] all material allegations in the said complaint.

(f) While the case was being prepared for trial and in the month of April, 1919, it came to the attention of the Murphy Oil Company that the said Maria Bastanchury was willing to consider a compromise.

(g) After a long conference on the part of the officials of the taxpayer corporation, it was decided, in order to minimize the extensive costs of the suit and to avoid as much as possible the unpleasant and disagreeable notoriety accompanying the suit, to compromise if a satisfactory compromise could be made.

(h) After long negotiations through a banker in Los Angeles, the two parties to the suit agreed upon a compromise whereby the said Maria Bastanchury withdrew her request for an accounting and agreed to accept the sum of $1,200,000.00 in full payment of any damages that the estate of the said Domingo Bastanchury may have suffered as a result of any action of the Murphy Oil Company.

(i) Accordingly a judgment was entered against the Murphy Oil Company for $1,200,000.00 under date of April 28th, 1919, which judgment was paid immediately thereafter.

(j) The taxpayer paid to its attorneys and as other legal expenses in connection with the above mentioned suit the sum of $170,877.24. The taxpayer in its accounts treated the entire sum of $1,370,-

877.24 as a loss during the calendar year 1919. [7]

(k) The Commissioner reversed the taxpayer's action in treating the above amount as a loss and refused to allow it as a deduction in computing net income for the year 1919.

(l) The Commissioner has determined that on January 1st, 1919, the unextinguished capital sum of the Coyote property of the Murphy Oil Company for purposes of depletion was $6,050,021.63 and that the recoverable oil reserves on the same date were 5,044,673 barrels.

(m) The production from the taxpayer's Coyote property for 1919 was 1,644,897 barrels and was for the year 1920 1,340,237 barrels.

PRAYER FOR RELIEF.

1. WHEREFORE, the taxpayer respectfully prays that the Board may decide that the sums of $1,200,000.00 and $170,877.24 are properly deductible from gross income in computing net income for the year 1919.

2. If the Board should decide that the above amounts are not deductible in computing net income for the year 1919, the taxpayer further prays that the Board may decide that the said amounts should be added to the capital sum of its Coyote Oil property as of January 1st, 1919 and amortized over the remaining life of the property on the basis of the oil produced.

3. The taxpayer further prays that the Board may dis- [8] allow the entire deficiency for both of the years 1919 and 1920.

4. The taxpayer further prays that the Board may duly hear and decide this appeal, and order the taxpayer's income and excess-profits tax liability recomputed accordingly.

GEO. E. HOLMES,
Attorney for the Taxpayer,
15 William Street,
New York City. [9]

State of Michigan,
County of Wayne.—ss.

William H. Murphy being duly sworn deposes and says that he is President of the MURPHY OIL COMPANY, Whittier, California, the taxpayer named in the foregoing petition; that as such he is duly authorized to verify the foregoing petition; that he has read the said petition, and is familiar with the statements therein contained; and that the facts set forth therein are true to the best of his knowledge, information and belief.

WILLIAM H. MURPHY,

Sworn to before me this 22nd day of April, 1926.

(Seal) WALTER P. CLARK,
Notary Public, Wayne County, Michigan.
My Commission expires Apr. 3, 1929. [10]

TAXPAYER'S EXHIBIT "A"

Treasury Department,
Washington.
Feb. 6, 1926.

Office of
Commissioner of Internal Revenue.
IT:CA:2555-8-60D.
Murphy Oil Company,
Whittier, California.
Sirs:

The determination of your income tax liability for the years 1919 and 1920, pursuant to an examination of your books of account and records as set forth in office letter dated December 12, 1925, disclosed a deficiency in tax amounting to $398,400.53, as shown in the attached statement.

In accordance with the provisions of Section 274 of the Revenue Act of 1924, you are allowed 60 days from the date of mailing of this letter within which to file an appeal contesting in whole or in part the correctness of this determination. Any such appeal must be addressed to the United States Board of Tax Appeals, Washington, D. C., and must be mailed in time to reach that Board within the 60-day period.

Where a taxpayer has been given an opportunity to appeal to the Board of Tax Appeals and has not done so within the 60 days prescribed and an assessment has been made, or where a taxpayer has appealed and an assessment in accordance with the final decision on such appeal has been made,

no claim in abatement in respect of any part of the deficiency will be entertained.

If you acquiesce in this determination and do not desire to file an appeal, you are requested to sign the enclosed agreement consenting to the assessment of the deficiency and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of It:CA:2555-8-60D. In the event that you acquiesce in a part of the determination, the agreement should be executed with respect to the items agreed to.

MF/3 Respectfully,

D. H. BLAIR,
Commissioner.

By Assistant to the Commissioner.

Inclosures:
Statements
Agreement—Form A
Form 882. [11]

Feb. 6, 1926.

STATEMENT

IT:CA:2555-8-60D

In re: Murphy Oil Company,
Whittier, California.

	Deficiency in Tax
1919	$ 76,740.20
1920	321,660.33
Total	$398,400.53

1919

Net income, books		$910,609.09
Additions:		
Income taxes disallowed in accordance with Article 131, Regulations 45,		354,316.20
Donations disallowed in accordance with Article 562, Regulations 45		1,039.16
Legal costs defending title to all lands in accordance with Article 293, Regulations 45,		170,877.24
Settlement of suit attaching title to oil land in accordance with Article 293, Regulations 45		1,200,000.00
Excessive depreciation in accordance with revised schedules		41.09
Total		$2,636,882.78
Deduct:		
Depletion restored excluded from income account the net adjustment due to revising reserves	$ 231,082.20	
Depletion allowed in accordance with engineer's report	2,072,660.49	2,303,742.69
Net income corrected		$ 333,140.09

Statement
Murphy Oil Company

INVESTED CAPITAL

Capital stock		2,000,000.00
Less:		
Stock discount in accordance with Section 326, Revenue Act of 1918		150,000.00
Capital stock		$1,850,000.00
Surplus - books	$313,433.28	
Plus:		
Adjustments, corrected balance sheet	150,651.22	
Surplus, corrected balance sheet	$464,084.50	464,084.50
Total		$2,314,084.50
1918 tax prorated in accordance with Article 845, Regulations 45	$ 69,364.70	
Dividends prorated in accordance with Article 858, Regulations 45	712,986.30	782,351.00
Balance		$1,531,733.50
Deduction:		
Inadmissibles in accordance with Article 852, Regulations 45		28,474.93
Invested capital - corrected		$1,503,258.57

EXCESS PROFITS CREDIT

8% of invested capital	$120,260.69
Exemption	3,000.00
Total credit	$123,260.69

Net Income	Credit	Balance	Rate	Tax
$300,651.71	$123,260.69	$177,391.02	20%	$35,478.20
32,488.38		32,488.38	40%	12,995.35
Excess profits tax				$48,473.55

MF/3 [13]

Statement

Murphy Oil Co.

Excess profits tax			$48,473.55
Net income		$333,140.09	
Less:			
Profits tax	$48,473.55		
Exemption	2,000.00	50,473.55	
Taxable at 10%		$ 282,666.54	28,266.65
Total tax			$76,740.20
Tax previously assessed			none
Deficiency in tax			$76,740.20

1920

Net income - books	$2,881,680.14
Add:	
Donations disallowed in accordance with Article 562, Regulations 45	1,246.59
Depletion claimed	102,692.94
Excessive depreciation in accordance with revised schedule	2,930.84
Total	$2,988,550.51
Deduct:	
1918 income tax credited back, due to the same not paid	$ 354,316.20
Depletion allowed in accordance with engineer's report	1,689,645.13
Net income corrected	$ 944,589.18

INVESTED CAPITAL

Capital stock		$2,000,000.00
Less:		
Stock discount		150,000.00
Capital stock		$1,850,000.00
MF/3 [14]		

Statement
Murphy Oil Co.

Amount brought forward		$1,850,000.00
Deficit - books	$175,957.63	
Add:		
Adjustments, corrected balance sheets	972,087.68	
Surplus, corrected balance sheets		796,130.05
Total		$2,646,130.05
Deduct:		
1919 taxes prorated in accordance with Article 845, Regulations 45	$ 32,342.16	
Dividends prorated in accordance with Article 858, Regulations 45	347,049.17	379,391.33
Balance		$2,266,738.72
Deduction:		
Inadmissibles in accordance with Article 853, Regulations 45		42,320.01
Invested capital corrected		$2,224,418.71

EXCESS PROFITS CREDIT

8% of invested capital	$177,953.50
Exemption	3,000.00
Total credit	$180,953.50

Net Income	Credit	Balance	Rate	Tax
$444,883.74	$180,953.50	$263,930.24	20%	$52,786.05
499,705.44		499,705.44	40%	199,882.18
$944,589.18				$252,668.23
Net income		$944,589.18		
Profits tax	$252,668.23			
Exemption	2,000.00	254,668.23		
Taxable at 10%		$689,920.95		
Taxable at 10%				68,992.10
Total tax				$321,660.33

MF/3 [15]

Statement
Murphy Oil Co.

Amount brought forward	$321,660.33
Tax previously assessed	none
Deficiency in tax	$321,660.33

BALANCE SHEET - DECEMBER 31, 1918

Assets	Books	Additions	Reductions	Amended
Cash	$ 86,250.87			$ 86,250.87
Notes Receivable	5,432.29			5,432.29
Accts. "	270,730.31			270,730.31
Sundry debtors	538,206.10			538,206.10
Farm products	5,141.15	$ 684.00(2)		5,825.15
Land	72,426.19			72,426.19
Agricultural land	370,285.06	161,700.70(3)		531,985.76
Equipment	441,331.50			441,331.50
Stock	46,252.21			46,252.21
Bonds	70,830.00			70,830.00
Discount capital stock	——	160,000.00(4)		150,000.00
Taxes overpaid	——	73,001.70(5)		73,001.70

Assets	Books	Additions		Reductions	Amended
Oil lands	1,319,200.70		(6)	1,046,207.84	262,992.86
	$3,226,086.38				$2,555,264.94
Accrued salaries	833.37				833.37
Accrued payroll	4,955.97				4,955.97
Accounts payable	19,197.70				19,197.70
Reserve for depreciation	63,986.95		(7)	2,206.45	66,193.40
Reserve for depletion	823,679.11	823,679.11	(8)		—
Capital stock	2,000,000.00				2,000,000.00
Surplus	313,433.28				464,084.50
	$3,226,086.38				$2,555,264.94

2. To adjust in accordance with books.
3. To set up corrected values of agricultural land.
4. To set up Stock Discount.
5. To set up tax overpayment in accordance with Article 845, Regulations 45.
6. To adjust in accordance with engineer's report.
7. To correct reserve in accordance with revised schedule.
8. Adjusted in asset account.

MF/3 [16]

Statement

Murphy Oil Co. BALANCE SHEET - DECEMBER 31, 1919

Assets	Books	Additions		Reductions	Amended
Cash	$84,747.89				$ 84,747.89
Notes Receivable	2,268.87				2,268.87
Accts. "	187,675.13				187,675.13
Sundry debtors	30,623.59				30,623.59
Inventories:					
Packing House	19,714.20				19,714.20
Farm products	1,449.87	684.00	(2)		2,133.87
Land	72,306.19				72,306.19
Agricultural land	370,285.06	161,700.70	(3)		531,985.76
Oil lands	1,319,200.70		(4)	193,908.53	1,125,292.17
Equipment	489,142.28				489,142.28
Stocks	50,309.15				50,309.15
Bonds	90,880.00				90,880.00
Cancelled checks	42.00				42.00
Discount on capital stock		150,000.00	(5)		150,000.00
Taxes overpaid		263,179.96	(6)		263,179.96
Oil land, March 1, 1913, appreciation	33,673,817.83		(7)	33,673,817.83	
	$36,392,462.76				$3,100,301.06

Liabilities	Books	Additions		Reductions	Amended
Accrued salaries	$ 833.37				833.37
Accrued payroll	4,965.16				4,965.16
Accounts payable	202,147.11				202,147.11
Reserve for depreciation	94,060.01		(8)	2,165.36	96,225.37
Reserve for depletion on cost	592,596.91	592,596.91	(9)		—
Reserve for depletion on appreciation	13,554,444.43		(10)	13,554,444.43	—
Capital stock	2,000,000.00				2,000,000.00
Earned surplus	—				796,130.05
Deficit	175,957.63				—
Surplus by appreciation of oil land	20,119,373.40				—
	$36,392,462.76				$3,100,301.06

MF/3 [17]

Statement Murphy Oil Co.

2 and 3. As previously explained for the balance sheet - December 31, 1918.
4. Adjusted in accordance with engineer's report.
5 and 6. As adjusted in previous year.
7. Eliminated as balance sheet revised on cost.
8. As explained in previous year.
9. Adjusted through asset account.
10 and 11. Eliminated balance adjusted on cost.

BALANCE SHEET - DECEMBER 31, 1920

Assets	Books	Additions	Reductions	Amended
Cash	$ 85,600.96			$ 85,600.96
Notes Receivable	2,193.95			2,193.95
Accts. "	245,109.65			245,109.65
Sundry debtors	206,741.57		$177,158.10	29,556.47
Inventories:				
Packing	25,331.85			25,331.85
Farm products	3,539.45	684.00		4,223.45
Land	72,306.19			72,306.19
Agricultural land	370,285.06	161,700.70		531,985.76
Oil lands	1,319,200.70		608,757.17	710,443.53
Equipment	517,468.99			517,468.99
Stocks	50,309.15			50,309.15
Bonds	380,880.00			380,880.00
Appreciation—				
Oil lands	33,673,817.83		33,673,817.83	—
Taxes overpaid	—	9,281.66		9,281.66
Discount on capital stock	—	150,000.00		150,000.00
	$36,952,758.35			$2,814,691.61

MF/3 [18]

Statement Murphy Oil Co.

BALANCE SHEET - DECEMBER 31, 1920 (Continued)

Liabilities	Books	Additions	Reductions	Amended
Accrued salaries	$ 1,000.00			$ 1,000.00
Accrued payroll	4,880.54			4,880.54
Accounts payable	20,382.10			20,382.10
Reserve for depreciation	131,665.52	$ 765.48		130,900.04
Reserve for depletion cost	695,289.85	695,289.85		—
Reserve for depletion on appreciation	16,133,709.03	16,133,709.03		—
Capital stock	2,000,000.00			2,000,000.00
Earned surplus	425,722.51			657,528.93
Surplus by appreciation	17,540,108.80	17,540,108.80		—
	$36,952,758.35			$2,814,691.61

Adjustments are as explained in the prior balance sheets

ANALYSIS OF SURPLUS

Surplus, December 31, 1918		$ 464,084.50
Net income		333,140.09
Realized appreciation		1,564,082.56
		$2,361,307.15
Dividends	$1,400,000.00	
1918 taxes	354,316.20	
	1,039.16	1,755,355.36
Balance		$ 605,951.79
Overpayment taxes		190,178.26
Surplus, December 31, 1919		$ 796,130.05
Net income, 1920		944,589.18
Realized appreciation		1,274,796.49
		$3,015,515.72
Dividends	$2,280,000.00	
Donations	1,246.59	2,281,246.59
Balance		$ 734,269.13
Taxes corrected		76,740.20
Surplus, December 31, 1920		$ 657,528.93

MF/3 [19]

Statement

Murphy Oil Co.

Depletion has been allowed in accordance with the attached revised schedule, based upon a ruling by the Bureau that the judgment and legal costs represent a part of the cost of the property and not additional capital items to be added to the March 1, 1913, value in accordance with Section 326 of the Revenue Act of 1918.

You are advised that your protest submitted by your representatives and received in this office January 12, 1925, has been carefully considered and it is deemed that a conference is not advisable at this time.

Relative to items one and two you are informed that the Commissioner has not acquiesced in these decisions and consequently cannot be allowed. Item three has been adjusted in accordance with your briefs.

Payment of the deficiency in tax should not be made until a bill is received from the Collector of Internal Revenue for your district and remittance should then be made to him.

Enclosure:
Revised depletion
schedule
MF/3 [20]

[Endorsed]: Filed Apr. 3, 1928.

Granted by Order of April 11, 1928.

(Title of Court and Cause.)

MOTION FOR LEAVE TO FILE AMENDED PETITION.

Now comes the petitioner, by its attorney, GEORGE E. HOLMES, and asks leave to file the attached Amended Petition in the above-named proceeding upon the following grounds:

1. Said Amended Petition sets forth more accurately and more clearly the facts upon which the petitioner relies in support of its contentions and the petitioner believes the more explicit allegations of fact and assignments of error contained in the

Amended Petition will greatly aid this Board in the understanding and proper determination of this case.

2. Further, the Amended Petition contains a new assignment of error (IV (a)) which was not included in the original petition and which petitioner believes to be a good and valid defense against the deficiency found by the Commissioner.

3. As a further and final reason for the granting of this Motion, the Amended Petition contains a request that the taxes be computed under the provisions of Section 327 and [21] Section 328 of the Revenue Act of 1918; a request for such Special Relief was not contained in the original petition. In view of the decision of the United States Supreme Court in the Oesterlein Machine Company case sustaining the right of this Board to subpoena comparatives from the Commissioner of Internal Revenue and the promulgation of Rule 62 by this Board to facilitate the application to pending appeals of the right so granted, the petitioner believes that it is in a position to present evidence which will justify the computation of its taxes under Sections 327 and 328 of the Revenue Act of 1918.

WHEREFORE, Petitioner prays that the Amended Petition be received.

GEORGE E. HOLMES,
Attorney for Petitioner.
15 William Street,
New York, N. Y. [22]

[Endorsed]: Filed April 11, 1928.

(Title of Court and Cause.)

AMENDED PETITION.

The above named petitioner has previously filed a petition with this Board under date of April 24, 1926, appealing from the determination of the Commissioner of Internal Revenue set forth in his deficiency letter dated February 6, 1926. This amended petition is hereby filed as an amendment to the original petition. As a basis for its appeal, the petitioner sets forth the following:

I. The taxpayer is a corporation organized under the laws of the State of California, with its home office at Whittier, California.

II. The deficiency letter from which this appeal is made was mailed to the Petitioner on February 6, 1926. The sixty day period within which to appeal to this Board as granted in that deficiency letter was subsequently extended to April 26, [23] 1926, by the Revenue Act of 1926. A copy of the deficiency letter from which this appeal is made is attached hereto marked Exhibit #1. A copy of the preceding thirty day letter dated December 12, 1925 is also attached hereto, marked Exhibit #2. A copy of a previous sixty day letter dated October 6, 1925 covering the same taxable years is also attached hereto and marked Exhibit #3.

III. The deficiencies asserted in the letter of February 6, 1926 are for income and excess profits taxes for the calendar years 1919 and 1920 and are

in the amounts of $76,740.20 and $321,660.33, respectively. The total amounts of these deficiencies are in controversy.

ASSIGNMENTS OF ERROR.

IV. The determination of the deficiencies set forth in the said deficiency letter is based upon the following errors:

(a) The Commissioner has erred in aserting against the petitioner the deficiencies in question after having previously determined deficiencies for the same taxable years and having failed to assess the deficiencies previously determined in the sixty day letter dated October 6, 1925.

(b) The Commissioner has erred in deducting from invested capital for the years 1919 and 1920 an amount of $150,000 alleged to represent discount on capital stock.

(c) The Commissioner has erred in deducting from invested capital for the years 1919 and 1920 an amount of [24] $1,364,015.39 representing the cost to the petitioner corporation of oil lands acquired at the date of its organization in exchange for capital stock of the petitioner corporation.

(d) The Commissioner has erred in failing to determine that the petitioner corporation was entitled to a paid-in-surplus on the basis of the oil lands acquired at the time of organization in exchange for its capital stock.

(e) The Commissioner has erred in failing to determine that the petitioner's invested capital and taxable income were abnormal for the taxable years

1919 and 1920 and that petitioner's excess profits tax liability should be computed under the provisions of Section 327 and 328 of the Revenue Act of 1918.

(f) The Commissioner has erred in refusing to allow as a deduction from net income for the year 1919 the sum of $170,877.24 paid in that year as legal expenses in defending an action against the petitioner for an accounting relative to a portion of its oil properties, to wit, its Coyote Oil Properties.

(g) The Commissioner has erred in refusing to allow as a deduction from net income for the year 1919 the sum of $1,200,000 paid in that year in settlement of a suit for an accounting brought against the petitioner relative to its Coyote Oil Properties.

(h) The Commissioner has further erred in determining that the amounts of $170,877.24 and the $1,200,000 paid by the petitioner in connection with a suit for an accounting relative [25] to its Coyote Oil Properties constitute capital expenditures and at the same time failing to determine that such amounts should be amortized over the remaining life of the said Coyote Oil Properties.

STATEMENT OF FACTS.

V. The facts on which the petitioner relies as the basis of this appeal are as follows:

(1) The Commissioner determined the petitioner's tax liability for the years 1919 and 1920 and under the provisions of Section 274 of the

Revenue Act of 1924 forwarded to the petitioner corporation a sixty day deficiency letter dated October 6, 1925, determining a deficiency of $63,738.38 for the year 1919 and a deficiency of $296,485.30 for the year 1920. A copy of this deficiency letter is attached hereto, marked Exhibit #3.

(2) The petitioner did not appeal from the determination set forth in the deficiency letter of October 6, 1925.

(3) The Commissioner has not assessed the deficiencies determined in the sixty day letter of October 6, 1925.

(4) Subsequent to the expiration of the sixty day period allowed by the letter of October 6, 1925 for appeal to this Board, to wit, on December 12, 1925, the Commissioner forwarded to the petitioner corporation a so-called thirty day letter determining a deficiency for the year 1919 in the amount [26] of $76,740.20 and a deficiency for the year 1920 in the amount of $321,528.94.

(5) Subsequently, to wit, February 6, 1926, the Commissioner forwarded to the petitioner corporation another deficiency notice determining a deficiency of $76,740.20 for the year 1919 and a deficiency of $321,660.33 for the year 1920.

(6) The Murphy Oil Company was incorporated on or about October 11, 1904 under the laws of the State of California.

(7) The Commissioner determined that upon its incorporation in 1904, the petitioner corporation issued its entire capital stock with a par value of

$2,000,000 to Simon J. Murphy for a fee title to 2,500 acres of land located near the town of Whittier in the State of California containing the petitioner's Whittier Oil Property, together with personal property of the nature and value as set forth below:

Imprest Cash Fund	$ 30.60
Cash in First National Bank, Whittier	10,468.82
Accounts Receivable	25,493.90
Development A. C. S. J. M. 17 Wells	153,156.81
Leaseholds	1,925.00
Buildings	5,425.86
Cottages (6)	4,400.00
Engines, Boilers, Pumps & Fittings	8,343.00
Other Machinery & Tools	606.30
Well Tools	9,906.40
Derricks & Equipment	10,000.00
Cables—Wire, etc.	2,840.00
Casing, Tubing, etc.	14,675.90
Tanks, Drums, etc.	27,508.00
Pipe Lines & Fittings	12,300.00
Tracks and Sidings	1,084.41
Horses	2,555.00
Wagons, Harness, etc.	975.00
	[27]
Telephone Equipment	650.00
Office Furniture & Fixtures	455.00
Oil in Storage (85000 Bbls)	51,000.00
Farm Products in Storage	6,200.00
Total	$350,000.00

(8) The Commissioner determined that the surface value of the said 2,500 acres of land acquired by the Petitioner upon its incorporation was $320,-374.37.

(9) The amount of capital stock which petitioner corporation issued for its Whittier oil property at the date of organization was $1,329,625.43 representing the difference between the total capital stock issued to Simon J. Murphy in the amount of $2,000,000 and the value of the surface land of $320,374.37 together with the value of the personal property acquired in the amount of $350,000.00

(10) The petitioner corporation did not dispose of any part of its capital stock at a discount.

(11) No additional capital stock was issued or sold by the petitioner corporation between the date of organization and December 31, 1920.

(12) The said 2,500 acres of land acquired by the petitioner upon its incorporation included approximately 500 acres of proven oil land. This oil field is hereinafter referred to as petitioner's Whittier oil property.

(13) Petitioner's Whittier oil property contained seventeen producing oil wells at the date of acquisition and had [28] been producing oil for many years prior to 1904.

(14) The market price of oil of the grade produced by the petitioner's Whittier oil property was 80¢ per barrel on or about the date of petitioner's incorporation.

(15) The Commissioner determined that the value of the petitioner's Whittier oil property on

March 1, 1913 was $1,450,207.08 and that the amount of oil recoverable from the said property at that date was 5,983,443 barrels.

(16) The above mentioned value of $1,450,-207.08 determined by the Commissioner as of March 1, 1913 was based upon a market price of oil of 35¢ a barrel at that time.

(17) The entire area of the petitioner's Whittier oil property on which the above mentioned March 1, 1913 value was based was proven oil bearing territory at the time of acquisition by the petitioner corporation.

(18) The petitioner corporation extracted from its Whittier oil property an amount in excess of 1,800,000 barrels of oil between the date of acquisition and March 1, 1913.

(19) The Commissioner reduced the petitioner's earned surplus by the total amount of $1,364,015.39 in computing invested capital for the taxable years 1919 and 1920.

(20) This action of the Commissioner in reducing petitioner's earned surplus by the amount of $1,364,015.39 resulted in the exclusion from invested capital of the total amount paid by petitioner for its Whittier oil property together with an amount of $34,389.96 representing capital expenditures made [29] by petitioner on its Whittier oil property subsequent to the acquisition of the said property.

(21) Petitioner's Whittier oil property had a fair market value greatly in excess of $1,329,625.43 at the date of acquisition.

(22) Simon J. Murphy was in control of the said Whittier oil property prior to its acquisition by the petitioner corporation and was in control of the petitioner corporation immediately after it acquired the said property.

(23) The petitioner corporation purchased from one Domingo Bastanchury by deed dated December 15, 1904, 2,240 acres of land in the Coyote Hills of California for a price of $35 per acre.

(24) The total price paid by the petitioner corporation for the said 2,240 acres of land amounted to $78,400.

(25) Subsequent to the purchase of the said land and prior to March 1, 1913, the petitioner corporation discovered that approximately 840 acres of said land contained oil bearing sands.

(26) Prior to March 1, 1913 this said property, which is hereinafter referred to as Petitioner's Coyote Property, proved to be one of the most valuable oil properties in the State of California.

(27) The Commissioner determined that the March 1, 1913 value of petitioner's Coyote property was $15,710,899.52.

(28) This valuation was based upon a market price [30] of oil of 35¢ per barrel.

(29) On or about August 26, 1918, Maria Bastanchury, the widow of the said Domingo Bastanchury and administratrix with the will annexed of his estate, filed a complaint in the Superior Court of Los Angeles County, California, against the Murphy Oil Company and the individual who in 1904 man-

aged the company's affairs and properties, for an accounting of the profits received by the Murphy Oil Company from the said Coyote property.

(30) The Murphy Oil Company employed a number of counsel and took active steps to defend itself.

(31) In its answer to the complaint of the said Maria Bastanchury, as administratrix with the will annexed of the Estate of Domingo Bastanchury, the Murphy Oil Company denied all the material allegations in the said complaint and vigorously opposed the complainant's prayer for an accounting of the profits received from the said Coyote property.

(32) While the case was being prepared for trial, to wit: in the month of April, 1919, it came to the attention of the Murphy Oil Company that the said Maria Bastanchury was willing to consider a settlement.

(33) After a long conference on the part of the officials of the petitioner corporation, it was decided, in order to minimize the extensive costs of the suit and to avoid as much as possible the disagreeable notoriety accompanying the suit, to settle, if a satisfactory settlement could be made. [31]

(34) After long negotiations through a banker in Los Angeles, the two parties to the suit agreed upon a settlement whereby the said Maria Bastanchury withdrew her request for an accounting and agreed to accept the sum of $1,200,000 in full settlement of any damages that the Estate of Domingo Bastanchury may have suffered as a result of any action of the Murphy Oil Company.

(35) Accordingly a judgment was entered against the Murphy Oil Company for $1,200,000 under date of April 28, 1919, which judgment was paid immediately thereafter.

(36) The petitioner paid during the year 1919 fees and other legal expenses in connection with the above-mentioned litigation in the amount of $170,-877.24.

(37) The petitioner in its accounts treated the entire amount of $1,370,877.24 as a loss during the calendar year 1919.

(38) The Commissioner reversed the petitioner's action in treating the above amount as a loss and refused to allow any part of the said amount as a deduction in computing net income for the year 1919.

(39) The Commissioner further refused to amortize the said payment of $1,370,877.24 over the remaining life of the Coyote oil property.

(40) The Commissioner determined that the petitioner's share of oil reserve in the Coyote property amounted to 5,044,673 [32] barrels as of December 31, 1918.

(41) The Commissioner determined that the amount of oil produced from the petitioner's share of the Coyote oil property during the year 1919 was 1,644,897 barrels.

(42) The Commissioner determined that the petitioner's share of the oil reserves in the Coyote property amounted to 3,399,776 barrels as of December 31, 1919.

(43) The Commissioner determined that the oil produced from petitioner's share of the Coyote

oil property during the year 1920 amounted to 1,340,237 barrels. [33]

PRAYERS FOR RELIEF.

The petitioner prays that this Board may determine that no part of the deficiencies determined in the letter of February 6, 1926, should be assessed for the reason that the Commissioner has failed to assess the deficiencies alleged in the letter of October 6, 1925, for the same taxable years.

Petitioner further prays that this Board may determine that petitioner's invested capital for the taxable years 1919 and 1920 should be increased by an amount of $150,000 representing the alleged discount on capital stock, the amount of $1,364,015.39 representing the cost to the petitioner of its Whittier Oil Property and an amount of $1,000,000 representing paid-in-surplus.

Petitioner further prays that this Board may determine that petitioner's income and invested capital were abnormal for the taxable years 1919 and 1920 and that petitioner's excess profits tax liability should be computed under the provisions of Sections 327 and 328 of the Revenue Act of 1918.

Petitioner further prays that this Board may determine that the amount of $1,370,877.24 paid by petitioner in connection with an action for an accounting constitutes an allowable deduction from taxable income for the year 1919, or that if the said amount constitutes a capital expenditure, the said amount should be amortized over the remaining life of petitioner's Coyote Oil Property on the

basis of a number of barrels of recoverable oil [34] in the said property at December 31, 1918.

Petitioner further prays that this Board may duly hear and determine this appeal and reduce petitioner's taxable income by such other deductions to which petitioner is entitled under the Revenue Act of 1918.

(signed) GEO. E. HOLMES,
(signed) VALENTINE B. HAVENS,
(signed) CHAS. B. McINNIS,
Attorneys for Taxpayer,
15 William Street,
New York City.

ELMONT B. HAZARD,
1039 Woodward Building,
Washington, D. C. [35]

State of Michigan,
County of Wayne.—ss.

William H. Murphy being duly sworn, deposes and says that he is William H. Murphy, President of the Murphy Oil Company of Whittier, California, the taxpayer named in the foregoing petition; that he has read the said petition and that the facts set forth therein are true to the best of his knowledge, information and belief.

(signed) WILLIAM H. MURPHY.

Sworn to before me this 2nd day of April, 1928.

[Notarial Seal] WALTER P. CLARK,
Notary Public, Wayne Co., Michigan.
My Commission Expires Apr. 3, 1929. [36]

[Endorsed]: Filed Sep. 20, 1928.
Granted Sep. 21, 1928.
(signed) B. H. LITTLETON,
Member U. S. Board of Tax Appeals.

(Title of Court and Cause.)

MOTION FOR PERMISSION TO FILE SECOND AMENDED PETITION.

Comes now the petitioner in the above entitled cause, by its Attorneys, George E. Holmes and Charles B. McInnis, and moves that it be permitted to file the attached petition in lieu of and as an amendment to the original and amended petitions previously filed with this Board.

This request is made for the reason that new facts have been discovered subsequent to the filing of the last petition which materially change petitioner's defense against the deficiency asserted by the Commissioner.

GEO. E. HOLMES,
Geo. E. Holmes,
15 William Street,
New York, N. Y.
CHAS. B. McINNIS,
Chas. B. McInnis,
15 William Street,
New York, N. Y.

[37]

[Endorsed]: Filed Sept. 21, 1928.

(Title of Court and Cause.)

SECOND AMENDED PETITION.

The above named petitioner filed a petition with this Board under date of April 24, 1926, appealing from the determination of the Commissioner of Internal Revenue, set forth in his deficiency letter, dated February 6, 1926. Subsequently this petitioner filed an amended petition, under date of April 3, 1928. This second amended petition is hereby filed as an amendment to the original petition and first amended petition. As a basis for its appeal, the petitioner sets forth the following:

I. The petitioner is a corporation organized under the laws of the State of California, with its home office at Whittier, California.

II. The deficiency letter from which this appeal is made was mailed to the petitioner on February 6, 1926. The sixty day period within which to appeal to this Board, as granted in that deficiency letter, was subsequently extended to April 26, 1926, by the Revenue Act of 1926. A copy [38] of the deficiency letter from which this appeal is made is attached hereto, marked Exhibit No. 1.

III. The deficiencies asserted in the letter of February 6, 1926 are for income and excess profits taxes for the calendar years 1919 and 1920 and are in the amounts of $76,740.20 and $321,660.33, respectively. The total amounts of these deficiencies are in controversy.

ASSIGNMENTS OF ERROR.

IV. The determination of the deficiencies set forth in the said deficiency letter is based upon the following errors:

(a) The Commissioner erred in refusing to allow as a deduction from net income for the year 1919 the sum of $170,877.24 paid in that year as legal expenses in defending an action against the petitioner for an accounting relative to a portion of its oil properties, to wit, its Coyote Oil Property.

(b) The Commissioner erred in refusing to allow, as a deduction from net income for the year 1919, the sum of $1,200,000 paid in that year in settlement of a suit for an accounting brought against the petitioner relative to its Coyote Oil Property.

(c) The Commissioner further erred in determining that the amounts of $170,877.24 and $1,200,000 paid by the petitioner during the year 1919 and the amount of $32,901.34 paid by the petitioner during the year 1918, in connection with a suit for an accounting relative to its Coyote Oil Property, constitute capital expenditures, and at the same time failing to determine that such amounts should be amortized over the remaining life of the said Coyote Oil property.

(d) The Commissioner erred in deducting from the capital sum returnable through depletion of the petitioner's [39] Whittier Oil property, an amount of $656,192.48 representing a bonus re-

ceived by the petitioner upon the leasing of the said oil property, in computing the amount of depletion sustained by the petitioner in connection with the said Whittier Oil property for the calendar years 1919 and 1920.

(e) The Commissioner erred in deducting from the capital sum returnable through depletion of the petitioner's Coyote Oil property, an amount of $4,517,402.70, representing a bonus received by the petitioner upon the leasing of the said oil property, in computing the amount of depletion sustained by the petitioner in connection with the said Coyote Oil property for the calendar years 1919 and 1920.

(f) The Commissioner erred in reducing petitioner's depletable base for both the Whittier and Coyote Oil properties by an amount alleged to represent depletion sustained on the March 1, 1913 value and subsequent cost of the said properties during the period from March 1, 1913 to December 31, 1915 whereas he should have reduced petitioner's depletable base by the amount of depletion which petitioner was legally entitled to take as a deduction in determining its taxable income for the said period from March 1, 1913 to December 31, 1915.

STATEMENT OF FACTS.

V. The facts upon which the petitioner relies as a basis of this appeal are as follows:

(1) The Murphy Oil Company was incorporated on or about August 18, 1904, under the laws of the State of California.

(2) The petitioner corporation, through its agents, purchased from one Domingo Bastanchury by deed dated December 15, 1904, 2,240 acres of land in Orange County, California, at a price of $35 per acre. [40]

(3) The total price paid by the petitioner corporation for the said 2,240 acres of land in Orange County, California, amounted to $79,400.

(4) Subsequent to the purchase of the said land and prior to March 1, 1913, the petitioner corporation discovered that approximately 840 acres of said land contained valuable oil bearing sands.

(5) On or about August 26, 1918, Maria Bastanchury, the widow of the said Domingo Bastanchury and administratrix with the will annexed of his estate, filed a complaint in the Superior Court of Los Angeles County, California, against the Murphy Oil Company and the individual who in 1904 managed the company's affairs and properties, for an accounting of the profits received by the Murphy Oil Company from the said Coyote property.

(6) The Murphy Oil Company employed a number of counsel and took active steps to defend itself.

(7) In its answer to the complaint of the said Maria Bastanchury as administratrix with the will annexed of the Estate of Domingo Bastanchury, the Murphy Oil Company denied all the material allegations in the said complaint and vigorously opposed the complainant's prayer for an accounting of the profits received from the said Coyote property.

(8) While the case was being prepared for trial, to wit, in the month of April, 1919, it came to the attention of the Murphy Oil Company that said Maria Bastanchury was willing to consider a settlement.

(9) After a long conference on the part of the officials of the Murphy Oil Company, it was decided, in order to minimize the extensive costs of the suit and to avoid as much as possible the disagreeable notoriety accompanying the suit, to settle, if a satisfactory settlement could be made. [41]

(10) After long negotiations through a banker in Los Angeles, the two parties to the suit agreed upon a settlement whereby the said Maria Bastanchury withdrew her request for an accounting and agreed to accept the sum of $1,200,000, in full settlement of any damages that the Estate of Domingo Bastanchury may have suffered as a result of any action of the Murphy Oil Company.

(11) Accordingly a judgment was entered against the Murphy Oil Company for damages in the amount of $1,200,000, under date of April 28, 1919, which judgment was paid immediately thereafter.

(12) The petitioner corporation paid during the year 1918 legal fees and other expenses in connection with the above mentioned litigation in the amount of $32,901.34.

(13) The petitioner corporation during the year 1919 paid legal fees and other legal expenses in connection with the above mentioned litigation in the amount of $170,877.24.

(14) The petitioner corporation, in its accounts, treated the amount of $32,901.34, paid during the year 1918 in connection with the above mentioned litigation, as a deductable expense in computing its taxable income for that year.

(15) The Commissioner reversed the petitioner's action and refused to allow the amount of $32,901.34 as a deduction in computing the petitioner's taxable income for the year 1918.

(16) The Commissioner failed to amortize the said amount of $32,901.34, paid during the year 1918 in connection with the above mentioned litigation, over the remaining life of the petitioner's Coyote Oil property.

(17) The petitioner in its accounts treated the amount of $1,370,877.24, paid during the year 1919 in connection [42] with the above mentioned litigation, as a loss during the calendar year 1919.

(18) The Commissioner reversed the petitioner's action in treating the above mentioned amount as a loss and refused to allow any part of the said amount as a deduction in computing taxable net income for the year 1919.

(19) The Commissioner further refused to amortize the said payment of $1,370,877.24, over the remaining life of the petitioner's Coyote Oil property.

(20) The Commissioner determined that petitioner's share of oil reserves in the Coyote Oil property at December 31, 1918 amounted to 5,044,673 barrels.

(21) The Commissioner determined that the amount of oil produced from the petitioner's share of the Coyote Oil properfy during the year 1919 was 1,644,897 barrels.

(22) The Commissioner determined that the petitioner's share of the oil reserves in the Coyote Oil Property at December 31, 1919 amounted to 3,399,776 barrels.

(23) The Commissioner determined that the oil produced from petitioner's share of the Coyote Oil property during the year 1920 amounted to 1,340,237 barrels.

(24) The petitioner leased to the Standard Oil Company, under date of December 1, 1913, its Whittier Oil property and its Coyote Oil property for a one-fourth royalty and a bonus of $5,500,000.

(25) The Commissioner determined that $326,-404.82 of the bonus represented payment for physical property and that the remaining amount of $5,173,595.18 represented a bonus on the two oil properties.

(26) The Commissioner further determined that $656,192.48 of the said amount of $5,173,595.18 represented a bonus on petitioner's Whittier Oil property and that the [43] remaining amount of $4,517,402.70 represented a bonus on petitioner's Coyote Oil property.

(27) The Commissioner deducted from the capital sum returnable through depletion of petitioner's Whittier Oil property, the said amount of $656,192.48 representing the bonus applicable to

the said Whittier Oil property, in determining the unit of depletion sustained by the petitioner on the amount of oil produced from the Whittier Oil property for the years 1919 and 1920.

(28) The Commissioner deducted from the capital sum returnable through depletion of petitioner's Coyote Oil property, the said amount of $4,517,-402.70 representing the bonus applicable to the said Coyote Oil property, in determining the unit of depletion sustained by the petitioner on the amount of oil produced from the Coyote Oil property for the years 1919 and 1920.

(29) The Commissioner determined that the depletion sustained by the petitioner on its Whittier and Coyote Oil properties during the period from March 1, 1913 to December 31, 1915 was as follows:

Year	Depletion sustained on March 1, 1913 value and subsequent cost.
1913	$257,375.58
1914	153,310.73
1915	344,771.69
Total	$755,458.00 [44]

(30) The Commissioner reduced petitioner's depletable base by the above amount of $755,458.00 in determining the amount of depletion allowable for the years 1919 and 1920.

(31) The gross value at the well of all of the petitioner's share of oil produced from its Whittier and Coyote Oil properties during the period from March 1, 1913 to December 31, 1915, amounted to $878,531.23.

(32) Under subdivision G (b) of the Revenue Act of 1913, approved October 3, 1913, the maximum amount of depletion which petitioner was legally entitled to deduct in computing its taxable net income for the period March 1, 1913 to December 31, 1915, was five percent of the gross value at the well of its share of the oil produced during the said period.

(33) Five percent of the gross value of petitioner's total share of oil produced from its Whittier and Coyote properties during the period from March 1, 1913 to December 31, 1915 amounted to $43,926.56. The difference between this amount and the amount of depletion alleged to have been sustained on the March 1, 1913 value and subsequent costs, or $711,531.44, represents the amount by which petitioner's depletable base for the two oil properties has been erroneously reduced in determining the amount of depletion allowable for the years 1919 and 1920. [45]

PRAYERS FOR RELIEF.

The petitioner prays that this Board may determine that the amount of $170,877.24 representing legal expenses paid by the petitioner during the year 1919 in connection with an action for an accounting relative to petitioner's Coyote Oil property constitutes an allowable deduction for the year 1919.

The petitioner further prays that this Board may determine that the amount of $1,200,000 repre-

senting damages paid during the year 1919 in connection with an accounting relative to petitioner's Coyote Oil property constitutes an allowable deduction for the year 1919.

The petitioner further prays that if this Board determine that the above named payments represent capital expenditures, it may determine that the said payments in the total amount of $1,370,877.24 together with the amount of $32,901.34 representing legal expenses paid during the year 1918 in connection with an action for an accounting relative to petitioner's Coyote Oil property, should be amortized over the remaining life of petitioner's Coyote Oil property on the basis of the number of barrels of recoverable oil in said property at December 31, 1918.

The petitioner further prays that this Board may determine that the capital sum returnable through depletion of petitioner's Whittier Oil property and Coyote Oil property should not be reduced by the amounts of $656,192.48 and $4,517,402.70 respectively, in determining the unit of depletion sustained by petitioner on oil produced from the said property during the years 1919 and 1920.

The petitioner further prays that this Board may determine that the depletable base of petitioner's Whittier and Coyote Oil properties should be reduced only by the de- [46] pletion legally allowable as a deduction from petitioner's taxable income for the period March 1, 1913 to December 31, 1915 in lieu of the depletion determined by the Commis-

sioner to have been sustained on the March 1, 1913 value and subsequent costs.

The petitioner further prays that this Board may duly hear and determine this appeal and reduce petitioner's taxable income by any other deduction to which petitioner is entitled under the Revenue Act of 1918 or subsequent revenue acts.

(Signed) GEO. E. HOLMES,
(Signed) RANDOLPH E. PAUL,
(Signed) CHARLES B. McINNIS,
Attorneys for Petitioner,
15 William Street,
New York, N. Y.
(Signed) THOMAS R. DEMPSEY,
Attorney for Petitioner,
508 Security Bldg.,
Los Angeles, California.
(Signed) ELMONT B. HAZARD,
Attorney for Petitioner,
1039 Woodward Bldg.,
Washington, D. C.
(Signed) BRADNER W. LEE, JR.,
(Signed) KENYON F. LEE,
Attorneys for Petitioner,
Herman W. Hellman Bldg.,
Los Angeles, California.

[47]

State of California,
County of Los Angeles.—ss.

Geo. E. Foley being duly sworn, deposes and says that he is 2nd Vice Pres. of the Murphy Oil Com-

pany of Whittier, California, the taxpayer named in the foregoing petition; that he has read the said petition and that the facts set forth therein are true to the best of his knowledge, information and belief.

(Signed) GEO. E. FOLEY.

Sworn to before me this 25th day of Aug., 1928.

SEAL

(Signed) TEMPERANCE R. BAILY,
Notary Public.

In and for the County of Los Angeles,
State of California. [48]

[Endorsed]: Filed Sept. 25, 1928.

(Title of Court and Cause.)

ANSWER TO SECOND AMENDED PETITION.

The Commissioner of Internal Revenue, by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, for answer to second amended petition of the above-named taxpayer admits and denies as follows:

I, II, III. Admits the allegations in paragraphs I, II and III.

V, (1) Admits the allegations in paragraph V, (1).

V, (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13). For lack of information upon which to base a belief, denies the allegations in paragraphs V, (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12) and (13).

V, (14), (15) Does not regard as material and therefore denies the allegations in paragraph*g* V, (14) and (15).

V, (16) Admits that the Commissioner failed to amortize the amount of $32,901.34 over the remaining life of the petitioner's Coyote oil property. Denies the remaining allegations in paragraph V, (16).

V, (17) Admits that the petitioner treated the amount of $1,370,877.24 as a loss during the calendar year 1919 in arriving at the net income reported on its income and profits tax return for the year 1919. Denies the remaining allegations in paragraph V, (17).

V, (18) Admits the allegations in paragraph V, (18).

V, (19) Admits that the Commissioner did not amortize the amount of [49] $1,370,877.24 over the remaining life of the petitioner's Coyote oil property. Denies the remaining allegations in paragraph V, (19).

V, (20) Denies the allegations in paragraph V, (20) and says that in arriving at the deficiency shown in the 60-day letter dated February 6, 1926, the Commissioner determined that the petitioner's share of oil reserves in the Coyote oil property at December 31, 1918 amounted to 5,051,424 barrels and not 5,044,673 barrels as alleged.

V, (21) Admits the allegations in paragraph V, (21).

V, (22) Denies the allegations in paragraph V, (22), and says that in arriving at the deficiency

shown in the 60-day letter dated February 6, 1926, the Commissioner determined that the petitioner's share of the oil reserves in the Coyote oil property at December 31, 1919 amounted to 3,406,527 barrels and not 3,399,776 barrels as alleged.

V, (23) Admits the allegations in paragraph V, (23).

V, (24) For lack of information upon which to base a belief, denies the allegations in paragraph V, (24).

V, (25) Admits that the Commissioner determined that $326,404.82 of the alleged bonus represented an alleged payment for physical property and that the remaining amount of $5,173,595.18 represented an alleged bonus on the two oil properties. Denies the remaining allegations in paragraph V, (25).

V, (26) Admits that the Commissioner further determined that $656,192.48 of the said amount of $5,173,595.18 represented an alleged bonus on the petitioner's Whittier oil property and that the remaining amount of $4,517,402.70 represented an alleged bonus on the petitioner's Coyote oil property. Denies the remaining allegations in paragraph V, (26). [50]

V, (27) Admits that the Commissioner deducted from the capital sum returnable through depletion of the petitioner's Whittier oil property, the said amount of $656,192.48 representing the so-called bonus applicable to the said Whittier oil property, in determining the unit of depletion sustained by the petitioner on the amount of oil procured from

the Whittier oil property for the years 1919 and 1920. Denies the remaining allegations in paragraph V, (27).

V, (28) Admits that the Commissioner deducted from the capital sum returnable through depletion of the petitioner's Coyote oil property the said amount of $4,517,402.70 representing the so-called bonus applicable to the said Coyote oil property, in determining the unit of depletion sustained by the petitioner on the amount of oil produced from the Coyote oil property for the years 1919 and 1920. Denies the remaining allegations in paragraph V, (28).

V, (29), (30) Admits the allegations in paragraphs V, (29) and (30).

V, (31), (32), (33) Denies the allegations in paragraphs V, (31), (32) and (33).

Denies generally and specifically each and every allegation in taxpayer's second amended petition not hereinbefore expressly admitted, qualified or denied.

WHEREFORE, it is prayed that the petition be denied.

(Signed) C. M. CHAREST,
General Counsel,
Bureau of Internal Revenue.

Of Counsel:
JOHN D. Foley,
Special Attorney,
Bureau of Internal Revenue.
jdf/9/21/28 [51]

[Endorsed]: Filed Oct. 22, 1928.

(Title of Court and Cause.)

STIPULATION.

It is hereby stipulated and agreed by and between the parties hereto by their respective counsel:

I.

That Domingo Bastanchury by deed dated December 15, 1904 conveyed to Edmund Bacon two thousand two hundred forty (2,240) acres of land located in Orange County, California, at a price of $35.00 per acre; that thereafter and on or about January 9, 1905, Edmund Bacon conveyed by deed the said property to the Murphy Oil Company; that attached hereto and marked Exhibits A1 and A2 are copies of the deeds herein referred to.

II.

That the total price paid by the Murphy Oil Company for the lands referred to in paragraph I hereof amounted to $78,400.00.

III.

That on or about August 26, 1918 Maria Bastanchury, the widow of Domingo Bastanchury and administratrix with the will annexed of his estate, filed a complaint in the Superior Court of Los Angeles County, California, against the Murphy Oil Company and Edmund Bacon; that thereafter and in due course of time the Murphy Oil Company filed its answer; that subsequent thereto and pursuant

to negotiations had between the parties, said suit was settled; that attached hereto and marked Exhibits B1 to B10 are copies of the papers in the action above referred to:

B1—Complaint. [52]

B2—Summons.

B3—Answer of Defendants.

B4—Consent to Judgment.

B5—Judgment for Plaintiff.

B6—Satisfaction of Judgment.

B7—Order authorizing settlement and compromise of title in Superior Court of the County of Orange, California, in the matter of the Estate of Domingo Bastanchury, Deceased.

B8—Petition of Maria Bastanchury, Administratrix with the Will Annexed of Domingo Bastanchury, in the Superior Court of Orange County, California, for an order authorizing her to compromise the claim of said Estate against the Murphy Oil Company, et al, and settle litigation.

B9—Release dated April 26, 1919 signed by Maria Bastanchury and children.

B10—Receipt and Agreement to Satisfy Judgment acknowledged April 29, 1919 by Maria Bastanchury as administratrix, and signed by the attorneys for the plaintiff in said action.

IV

That subsequent to the entry of the judgment herein referred to said Murphy Oil Company, during the year 1919 paid the total sum of $1,200,000.00

in satisfaction thereof; that during the year 1919 the Murphy Oil Company paid the sum of $170,-877.24 representing legal fees and other legal expenses in connection with the defense of said suit; that during the year 1918 the Murphy Oil Company paid the sum of $32,901.34 representing legal fees in connection with the defense of said action; that attached hereto and marked Exhibit C is a photostatic copy of the entry referring to the [53] said $32,901.34; that attached hereto and marked Exhibit D is a photostatic copy of the entry made on the books of the Murphy Oil Company relating to the sum of $170,877.24; that attached hereto and marked Exhibit E is a photostatic copy of the entry made by the Murphy Oil Company in its books relating to the said sum of $1,200,000.00; that the Murphy Oil Company, as indicated by the photostatic copy attached hereto, treated said payments as expenses and took them as a deduction in its income and profits tax return for the respective years 1918 and 1919; that the Commissioner, in examining the said returns, disallowed said items as deductions.

V

The Murphy Oil Company under date of December 1, 1913, leased the Whittier Oil property and its Coyote Oil property to the Standard Oil Company, a California corporation, a true copy of said lease being attached hereto and marked Exhibit F; that pursuant to the terms of said lease herein referred to the Murphy Oil Company in addition to the roy-

alties received in oil, received from the Standard Oil Company of California the sum of $5,500,000.00 in installments as follows:

Dec. 31, 1913	$1,500,000.00
April 1, 1914	$1,000,000.00
March 1, 1915	250,000.00
June 4, 1915	250,000.00
Dec. 1, 1915	250,000.00
Dec. 31, 1915	250,000.00
July 13, 1916	500,000.00
Dec. 1, 1916	500,000.00
Dec. 1, 1917	500,000.00
Dec. 1, 1918	500,000.00
Total	$5,500,000.00

A. GEORGE BOUCHARD,
Special Attorney Bureau of Int. Rev.
Attorney for Commissioner.
A. CALDER MACKAY,
Attorney for Petitioner [54]

State of California,
County of Orange.—ss.

I, J. M. Backs, County Clerk and ex-officio clerk of the Superior Court in and for said County (the same being a Court of Record, having a seal), do hereby certify that Justine Whitney is, and was at the time of signing the within instrument, an acting County Recorder in and for said County, duly qualified, and full faith and credit are due to all his official acts as such.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Superior Court, at my office, this 25th day of September, 1928.

[Seal] J. M. BACKS,
County Clerk.

I, James L. Allen, Esq., Judge of the Superior Court of the State of California, within and for the County of Orange, hereby certify that J. M. Backs, whose signature is affixed to the above certificate, is the County Clerk of the County of Orange, State of California, and ex-officio Clerk of the Superior Court in and for said County and is the proper certifying officer of said Court, and has by law the custody of the seal, and all the records, books, documents and papers of or appertaining to said Court, and said certificate is in due form as used in this State.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of September, 1928 in the year of our Lord nineteen hundred and Twenty-eight.

JAMES L. ALLEN,
Judge of the Superior Court.

State of California,
County of Orange,—ss.

I, J. M. Backs, County Clerk of the County of Orange, State of California, and ex-officio Clerk of

the Superior Court thereof, which is a court of record having a seal, hereby certify that Hon. James L. Allen, whose name is subscribed to the above certificate of qualification, was at the date thereof a Judge of the Superior Court of the State of California, in and for said County, duly elected and qualified, that he is authorized to make such certificates; that full faith and credit are due to his official acts as such Judge. I further certify that I verily believe that the signature attached to said certificate is genuine and that said certificate is executed according to the laws of the State of California.

Witness my hand and the official seal of the Superior Court of Orange County, hereto affixed this 25th day of September, 1928.

[Seal] J. M. BACKS,
County Clerk and ex-officio Clerk of said Court.

[55]

THIS INDENTURE, made the fifteenth day of December, in the year of our Lord one thousand nine hundred and four, Between Domingo Bastanchury and Maria Bastanchury, his wife, of Fullerton, California, the parties of the first part, and Edmund W. Bacon of Whittier, California, the party of the second part,

WITNESSETH: That the said parties of the first part, for and in consideration of the sum of One Thousand ($1000.00) Dollars in Gold Coin of

the United States of America to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain and sell, convey and confirm unto the said party of the second part and to his heirs and assigns forever, all that certain real property situate in the County of Orange, State of California, and particularly described as follows:

All of Sections Eighteen (18) and Twenty (20); South Half (S½) and South Half (S½) of North Half (N½) of Section Seventeen (17) and North Half (N½) and Southeast Quarter (SE¼) of Section Nineteen (19), Township Three (3) South, Range Ten (10) West, S. B. M.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD all and singular the said premises, together with the appurtenances, unto the said party of the second part and to his heirs and assigns forever.

IN WITNESS WHEREOF the said parties of the first part have hereunto set their hands and seals the day and year in this indenture first above written.

[Seal] DOMINGO BASTANCHURY,
By MARIA BASTANCHURY,
his atty. in fact.

Signed, sealed and delivered in the presence of

[Seal] MARIA BASTANCHURY,

State of California,
County of Los Angeles.—ss.

On this 16th day of December, in the year of our Lord one thousand nine hundred and four, before me, N. W. Thompson, a Notary Public in and for said County of Los Angeles, State of [56] California, residing therein, duly commissioned and sworn, personally appeared Maria Bastanchury, wife of Domingo Bastanchury, known to me to be the person described in and whose name is subscribed to the foregoing instrument, and she acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] N. W. THOMPSON,
Notary Public in and for the County of Los Angeles, State of California.

State of California,
County of Los Angeles.—ss.

On this 16th day of December, in the year one thousand nine hundred and four, before me, N. W. Thompson, a Notary Public in and for said County of Los Angeles, residing therein, duly commissioned and sworn, personally appeared Maria Bastanchury, known to me to be the person whose name is subscribed to the within instrument as the attorney in fact of Domingo Bastanchury, and acknowledged to me that she subscribed the name of Domingo Bastanchury thereunto as principal, and her own as attorney in fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] N. W. THOMPSON,
Notary Public in and for said Los Angeles County, State of California.

A full, true and correct copy of the original recorded at the request of Grantee the 4th day of January, A. D. 1904, at 32 min. past 2 o'clock p. m. George E. Peters, County Recorder, By W. S. Gregg, Deputy. [57]

State of California,
County of Orange,—ss.

I HEREBY CERTIFY The foregoing to be a full, true and correct copy of the instrument appearing recorded in Book No. 104 of Deeds, page 318 Records of Orange County, and that I have carefully compared the same with the original record.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal this 24 day of September, 1928.

(Seal) JUSTINE WHITNEY,
County Recorder [58]

State of California,
County of Orange,—ss

I. J. M. Backs, County Clerk and ex-officio clerk of the Superior Court in and for said County (the same being a Court of Record, having a seal, do

hereby certify that Justine Whitney is, and was at the time of signing the within instrument, an acting County Recorder in and for said County, duly qualified, and full faith and credit are due to all his official acts as such.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Superior Court, at my office, this 25th day of September, 1928.

[Seal] J. M. BACKS,
County Clerk.

I, James L. Allen, Esq., Judge of the Superior Court of the State of California, within and for the County of Orange, hereby certify that J. M. Backs, whose signature is affixed to the above certificate, is the County Clerk of the County of Orange, State of California, and ex-officio Clerk of the Superior Court in and for said County and is the proper certifying officer of said Court, and has by law the custody of the seal, and all the records, books, documents and papers of or appertaining to said Court, and said certificate is in due form as used in this State.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of September, 1928 in the year of our Lord nineteen hundred and Twenty-eight.

JAMES L. ALLEN,
Judge of the Superior Court.

State of California,
County of Orange,—ss.

I, J. M. Backs, County Clerk of the County of Orange, State of California, and ex-officio Clerk of the Superior Court thereof, which is a court of record having a seal, hereby certify that Hon. James L. Allen, whose name is subscribed to the above certificate of qualification, was at the date thereof a Judge of the Superior Court of the State of California, in and for said County, duly elected and qualified, that he is authorized to make such certificates; that full faith and credit are due to his official acts as such Judge. I further certify that I verily believe that the signature attached to said certificate is genuine and that said certificate is executed according to the laws of the State of California.

WITNESS my hand and the official seal of the Superior Court of Orange County, hereto affixed this 25th day of September, 1928.

[Seal] J. M. BACKS,
County Clerk and ex-officio Clerk of said Court [59]

THIS INDENTURE, Made the 9th day of January, in the year of our Lord one thousand nine hundred and five, between Edmund W. Bacon and Anna Bacon, his wife, of Whittier, California, the parties of the first part, and Murphy Oil Com-

pany, a corporation organized and existing under the laws of the State of California, having its principal place of business at Whittier, California, the party of the second part,

WITNESSETH: That the said parties of the first part for and in consideration of the sum of Ten Dollars in Gold Coin of the United States of America to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain and sell, convey and confirm unto the said party of the second part, and to its successors and assigns, forever, all of that certain real property situate in the County of Orange, State of California, and particularly described as follows:

In the Ranchos La Habra, Los Coyotes and San Juan Cajon de Santa Ana, all of Sections Eighteen (18) and Twenty (20); the South Half (S½) and South Half (S½) of the North Half (N½) of Section Seventeen (17); the North Half (N½) and Southeast Quarter (SE¼) of Section Nineteen (19); all in Township Three (3) South, Range Ten (10) West, S. B. M., estimated to contain 2240 acres; reserving therefrom for roads, railroads and ditches, a strip of land 30 feet wide along, adjoining and each side of the township and section lines, and a strip of land 20 feet wide along, adjoining and each side of the quarter section lines.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion

and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD all and singular the said premises together with the appurtenances, unto the said party of the second part, and to its successors and assigns forever.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals the day and year in this indenture first above written. [60]

[Seal] EDMUND W. BACON,

[Seal] ANNA BACON.

Signed, sealed and delivered in the presence of M. T. OWENS.

State of California,
County of Los Angeles,—ss.

On this 12th day of January, in the year of our Lord one thousand nine hundred and five, before me, M. T. Owens, a Notary Public in and for the County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared Edmund W. Bacon and Anna Bacon, his wife, known to me to be the persons described in and whose names are subscribed to the foregoing instrument, and they acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] M. T. OWENS,
Notary Public in and for the County of Los Angeles, State of California.

I, Edmund W. Bacon, Secretary of the Murphy Oil Company, a corporation, grantee in the within deed, do hereby certify that the capital stock of said corporation is divided into 20,000 shares of the par value of One Hundred Dollars ($100) each, all of which stock is outstanding; that as shown by the stock books of said corporation, the said shares of stock are now held by the following named persons to the number set opposite their names:

Simon J. Murphy	19,996
William H. Murphy	1
William Plotts	1
E. W. Bacon	1
Frank C. Owens	1
Total	20,000 shares

WITNESS my hand this 9th day of January, 1905.

EDMUND W. BACON [61]

State of California,
County of Los Angeles,—ss.

On this 12th day of January, in the year of our Lord one thousand nine hundred and five, before me, M. T. Owens, a Notary Public in and for said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared Edmund W. Bacon, Secretary of Murphy Oil Company, known to me to be the person in and whose name is subscribed to the foregoing instrument, and he acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] M. T. OWENS,
Notary Public in and for the County of Los Angeles, State of California.

I, Simon J. Murphy, owner and holder of more than two-thirds of the outstanding stock of the Murphy Oil Company, a corporation, grantee in the within deed, do hereby consent to the purchase by said corporation of the lands described in said deed, and hereby ratify said deed.

SIMON J. MURPHY,
William H. Murphy as to S. J. M.

State of Michigan,
County of Wayne,—ss.

On this 26th day of January, in the year one thousand nine hundred and five, before me, a Notary Public in and for the said County of Wayne, residing therein, duly commissioned and sworn, personally appeared Simon J. Murphy, known to me to be the person described in and whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written. [62]

[Seal] WILLIAM H. WETHERBEE,
Notary Public in and for Wayne County, State of Michigan.

My commission expires Jany. 8, 1907.

A full, true and correct copy of the original recorded at the request of the Murphy Oil Company November 13, 1907, at 13 min. past 2 P. M.

GEO. E. PETERS, Recorder [63]

State of California,
County of Orange,—ss.

I HEREBY CERTIFY The foregoing to be a full, true and correct copy of the instrument appearing recorded in Book No. 157 of Deeds, page 54, Records of Orange County, and that I have carefully compared the same with the original record.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal this 24 day of September, 1928.

(Seal) JUSTINE WHITNEY,
County Recorder. [64]

No..... Dept.....

In the Superior Court of the County of Los Angeles, State of California.

MARIA BASTANCHURY, Administratrix with the will annexed of the estate of Domingo Bastanchury, deceased,

Plaintiff.

vs.

MURPHY OIL COMPANY, a corporation, and EDMUND W. BACON,

Defendants.

COMPLAINT FOR RELIEF ON THE GROUND OF FRAUD AND FOR AN ACCOUNTING.

The above named plaintiff complains of the above named defendants and for cause of action alleges:

1. Ever since August 18, 1904, defendant Murphy Oil Company has been, and now is, a corporation duly organized and existing under and by virtue of the laws of the state of California, with its principal place of business in the city of Whittier, in the county of Los Angeles, in said state.

2. For many years prior to April 1, 1903, and down to the time of his death, on or about July 21, 1909, said Domingo Bastanchury and Maria Bastanchury were husband and wife. Said Domingo Bastanchury was a Basque, a native of France, and, although long a resident of the state of California, he never became familiar with the English language and neither spoke, wrote, nor understood the same. Said Maria Bastanchury acted as interpreter for said Domingo, and he entrusted to her the transaction of such of his business as required the use of the English language. Said Domingo Bastanchury was by occupation a stock rancher, engaged in raising sheep, cattle, and other kinds of livestock, and also various grain crops both for sale and for the subsistence of his livestock, and spent, during the years 1904 [65] and 1905, a large part of his time away from the residence of himself and his said wife and in the camps of his employes, who were largely of the same race and speech with himself. Neither said Domingo Bastanchury nor said Maria Bastanchury, at any of the times hereinafter stated, had any knowledge of, or experience in, the business of discovering oil, or determining whether land contained, or was likely to contain, oil, and neither of them had any knowledge of, or experience in, the

business of drilling wells for the discovery or production of oil and gas, or with the appearances or facts which, in the progress of the drilling of such a well, would indicate that oil had been struck.

3. Said Domingo Bastanchury died on or about July 21, 1909, in the county of Orange, state of California, he, said decedent, being at said time a resident of said county, and leaving estate therein. Said Domingo Bastanchury left a last will and testament dated October 30, 1893, wherein one Orel N. Goldaracena was named as executor, who thereafter, to-wit, May 22, 1918, in writing, renounced his right to act as executor of said will. June 18, 1918, plaintiff, Maria Bastanchury, filed her petition with the Clerk of the Superior Court of said county of Orange for the admission of said will to probate and the issuance to her of letters of administration with the will annexed of the estate of said decedent. Such proceedings were thereafter had in said court, in the matter of said estate, that July 5, 1918, said court, by its order duly given and made, admitted said will to probate as the last will and testament of said decedent, and directed letters of administration with the will annexed to issue to plaintiff, Maria Bastanchury, upon her taking the oath required by law, and giving bond as required by said order. Thereafter, and on the same day, said Maria Bastanchury duly qualified by taking such oath and giving said bond, and thereupon the clerk of said court [66] under the seal thereof, on said 5th day of July, 1918, issued such letters of administration to said Maria Bastanchury, which letters have not been

revoked, and she ever since has been, and now is, the duly appointed, qualified and acting administratrix with the will annexed of the estate of said decedent.

4. April 1, 1903, said Domingo Bastanchury was the owner of all that certain real property situate in the county of Orange, state aforesaid, and more particularly described as follows, to-wit:

The E. ½ of N. W. ¼, and the S. W. ¼ of the N. W.¼, the S. ½ of the N. W. ¼ of the N. W.¼, and the E. ½ of the N. ½ of the N. W. ¼ of the N. W. ¼ and the S. W. ¼ of Sec. 15; the S. ½ of the N. E. ¼, the S. ½ of the N. ½ of the N. E. ¼, and the S. ½ of the N. W. ¼, and all of the South ½ of Section 16.

The S. ½ of the N. E. ¼, the N. W. ¼, and the S. ½ of Section 17. All of section 18. The N. ½ and S. E. ¼ of Section 19. All of section 20; all of section 21; the N. ½ of section 28; the N. ½ of Section 29, and the N. E. ¼ of Section 30; all being situate in Township 3 South, Range 10 West, S. B. M., in the County of Orange, State of California, being 4590 acres more or less.

By indenture of lease dated April 1, 1903, said Domingo Bastanchury and Maria Bastanchury, his wife, leased the real property above described to one Simon J. Murphy for a period of twenty years, for the purpose and to the end that, in compliance with the covenants and provisions of the said indenture of lease, the said Murphy should drill and operate wells for the discovery and production of petroleum oil and gas on and from said real prop-

erty, which indenture of lease is in the words and figures following to wit:

"LEASE.

THIS INDENTURE, Made and entered into this first day of April, A. D., 1903, by and BETWEEN Domingo Bastanchury, and Maria Bastanchury, husband and wife, of the County of Orange, State of California, the parties of the first part, [67] and Simon J. Murphy, of Detroit, Michigan, the party of the second part,

WITNESSETH: That the said parties of the first part, for and in consideration of the sum of One Thousand ($1000) Dollars to them in hand paid, the receipt whereof is hereby acknowledged, and in the further consideration of the covenants and agreements on the part of the said second party hereinafter contained, have granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell and convey unto the said party of the second part, and to his heirs and assigns, the right and privilege for the period of twenty years from and after the date hereof, to dig, drill, bore for, develop, mine, extract, receive, hold, own, sell and remove all oil or gas that lies within, upon or under the following described land, to wit:

The E. ½ of N. W. ¼, and the S. W. ¼ of the N. W. ¼, the S. ½ of the N. W. ¼ of the N. W. ¼, and the E. ½ of the N. ½ of the N. W. ¼ of the N. W. ¼ and the S. W. ¼ of Sec. 15; the S. ½ of the N. E. ¼, the S. ½ of the N. ½ of the N. E. ¼, the S. ½ of the N. W. ¼, and all of the South ½ of Section 16.

The S. ½ of the N. E. ¼, the N. W. ¼, and the S. ½ of Section 17. All of section 18. The N. ½ and S. E. ¼ of Section 19. All of Section 20; all of Section 21; the N. ½ of Section 28; the N. ½ of Section 29, and the N. E. ¼ of Section 30; all being situate in Township 3 South, Range 10 West, S. B. M., in the County of Orange, State of California, being 4590 acres, more or less.

And the said party of the second part is hereby granted the right of way for ingress or egress to, from and across the said land, and the right to take, erect and maintain on the land hereinbefore described, and remove therefrom at the expiration or sooner termination of this lease, or when no longer in use, all necessary pipe, pipe lines, tools, machinery, equipments, materials, buildings, oil tanks, receptacles and apparatus whatsoever used or to be used in or about the full and complete exercise and enjoyment of the right or privilege hereby granted. And in addition to the land hereinbefore described, the above grant of right of way for ingress or egress to said land, and the right to erect, maintain and remove all necessary pipe, pipe lines, tools, machinery, tanks, buildings, etc. therefrom, is extended to cover the following described property for the purpose of a pipe line and roadway to the Railroad, the maintenance of tanks for storage purposes at said Railway, and the necessary switches or turn-outs, to wit:

The S. ½ of Section 29, the S. E. ¼ of Section 30, the N. ½ of Section 31, the N. W. ¼ and the N. ½ of the N. ½ of the N. E. ¼ of Section 32, in

Township 3 South, Range 10 West, [68] S. B. M., in the County of Orange, and State of California.

And the said party of the second part hereby agrees that he will, within three months from the date hereof, commence the work of drilling a well, and prosecute said work with diligence until oil or gas in paying quantities has been struck, or until a depth of at least one thousand feet shall have been reached at the option of said second party. And in the event that oil or gas in paying quantities be struck, then said party of the second part agrees to pump said well, and such other well or wells as they may thereafter drill on said land in which oil or gas in paying quantities is struck, to the full capacity of the same at all times, Sundays and holidays excepted, and to extract and preserve the oil or gas, if in paying quantities, over and above that used by said party of the second part for lighting and fuel purposes at the well or wells, the time taken for accidents, repairs, or in pulling or cleaning the said well or wells, or other appliances, excepted, so long as such well or wells shall produce oil or gas in paying quantities, not less than three barrels per day of twelve hours pumping, and in the event oil or gas in paying quantities be struck in said first well, then said party of the second part agrees to, within thirty days, of the completions of said first well, commence the work of boring a second well, and prosecute said work diligently to the same extent, in the same manner, and under the same conditions as well number one, and in the event of oil

being struck in well number two, then within the same time, and in the same manner, and under the same conditions to bore another well, and so on within the same time and in the same manner and under the same conditions to bore other wells during the existence of this lease.

And the said parties of the first part, in consideration hereof, are to have and receive one-eighth (1/8) of the net output of the oil from said well or wells, after deducting such quantities of oil as may be required for the operation of the mechanical plant used in producing and handling such output, and in drilling said well or wells, and doing the necessary pumping therefrom during the life of this lease, the said one-eighth (1/8) of such net output to be delivered to said parties of the first part by said party of the second part on the land hereby leased, and said second party to furnish storage capacity therefor for thirty days after the production of said output, without charge to the parties of the first part; at the end of which period, said parties of the first part are to remove said oil from the storage plants of said party of the second part.

And said parties of the first part shall receive one-sixteenth (1/16) of the net output of gas from said well or wells, after deducting such quantities of gas as may be required for the operation of the mechanical plant used in producing and handling such [69] output, and in drilling said well or wells, and operating the pumps connected with said business during the life of this lease, said royalty of gas to be delivered to said parties of the first part at the well or wells, and said parties of the first part

are to furnish all pipes to convey the same therefrom.

And the said party of the second part shall provide and maintain in perfect working order and condition, at the said well or tanks, accurate devices for measuring said net output, and shall keep full, true and perfect accounts, showing the amount of oil and gas produced, and said measuring devices and accounts shall at all times be open to the inspection of said parties of the first part, or either of them.

And in addition to the foregoing royalties, the said party of the second part agrees to pay unto the said parties of the first part, the sum of One Thousand ($1000) Dollars upon the first day of April of each and every year during the existence of this contract.

The said parties of the first part hereby reserve the right to use or let land hereby leased for all purposes not inconsistent with the rights and privileges granted by this lease, to wit: boring for oil and gas; and the use or letting of said land for general agricultural and grazing purposes shall not be deemed to be inconsistent with the rights and privileges hereby granted.

IT IS FURTHER PROVIDED That in case of a failure to bore any well or wells as provided by this contract, or at the expiration thereof at the end of twenty years, the land shall revert to said parties of the first part, except that said party of the second part, or his assigns, shall have the right to pump all producing wells that may already have been

bored and the right to maintain all necessary machinery, plants, pipe lines, etc. for the purpose of operation of said wells; provided, however, that said parties of the first part shall not thereafter be allowed to bore any well or wells within two hundred feet of any producing well, theretofore bored by the party of the second part, or his assigns.

Should water be found in wells in boring for oil, that are valueless for oil or gas, said first parties hereby reserve the right to the casing in such well or wells where water may be found on paying the reasonable value for said casing, and in that event, the casing in such well or wells is not to be removed, but in case that said party of the second part shall put in a water well for use by him, and afterwards abandons this lease, then said party of the second part shall leave the casing in such well, and the same shall revert to said parties of the first part without expense to them.

IT IS FURTHER UNDERSTOOD AND AGREED That if said party of the second part shall make a bona fide effort to put down a paying well, and shall fail after one year's effort to drill a producing well, that he has and hereby retains the privilege of terminating this lease after thirty days' notice in writing to [70] said parties of the first part.

IT IS FURTHER UNDERSTOOD AND AGREED That in case the price of oil at said wells or on board the cars at the nearest railroad siding at which the same may be shipped, is not, at least fifty cents per barrel of forty-two gallons, then said

second party may cease drilling until such time as the said oil can be sold for at least fifty cents per barrel at said place, and shall not forfeit his rights under the terms of this lease.

IT IS FURTHER AGREED THAT TIME is of the essence of this contract, and in the event of a failure to comply with any of the terms hereof by said party of the second part, or his assigns, said parties of the first part, and all of them, shall thereby be released from any and all obligations under this contract, and this contract shall thereby cease and determine, and the rights of said second party, or his assigns hereunder shall be forfeited.

AND IT IS UNDERSTOOD That the agreements and stipulations aforesaid are to apply to and bind the heirs, executors, administrators and assigns of the respective parties.

IN WITNESS WHEREOF, the said parties to these presents have hereunto set their hands and seals in duplicate, the day and year first above written.

DOMINGO BASTANCHURY, [Seal]
By MARIA BASTANCHURY [Seal]
his atty. in fact [Seal]
MARIA BASTANCHURY [Seal]
SIMON J. MURPHY [Seal]

State of California,
County of Los Angeles,—ss.

On this 9th day of April in the year one thousand, nine hundred and three A. D. before me, M. T.

Owens, a Notary Public in and for said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared Maria Bastanchury personally known to me to be the person described in and whose name is subscribed to the within instrument, as the attorney in fact of Domingo Bastanchury and acknowledged to me that she subscribed the name of Domingo Bastanchury thereto as principal and her own name as attorney in fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in said County, the day and year in this certificate first above written.

[Seal] M. T. OWENS,
Notary Public in and for Los Angeles County, State of California.
(Attorney in Fact) [71]

State of California,
County of Los Angeles,—ss.

On this 9th day of April in the year one thousand nine hundred and three A. D. before me M. T. Owens, a Notary Public in and for said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared Maria Bastanchury personally known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] M. T. OWENS,

Notary Public in and for Los Angeles County, State of California.

(General)"

5. Thereafter, and on or about July 1, 1903, said Simon J. Murphy commenced to drill, and thereafter prosecuted the drilling of, a well for the discovery of, and the production therefrom of petroleum oil upon the northwest quarter of the southwest quarter of said section 18, which well was thereafter known as "Murphy-Coyote No. 1" and is hereinafter for brevity designated as well No. 1.

6. As plaintiff is informed and believes, and upon such information and belief alleges, the said Simon J. Murphy on or about August 18, 1904, caused defendant, Murphy Oil Company, to be incorporated, for the purpose and to the end that it might acquire and take over from said Simon J. Murphy and operate, certain oil properties, including the aforesaid lease from said Domingo and Maria Bastanchury, and the leasehold estate thereby created; and prior to November 1, 1904, said Simon J. Murphy assigned and transferred to defendant Murphy Oil Company the said indenture of lease and all interest therein of the said Murphy and also sundry other parcels of oil property; and, in consideration of such assignments and transfers, defendant Murphy Oil Company caused to be issued to said

Murphy shares of its capital stock, so that November 1, 1904, and until a time subsequent to [72] January 26, 1905, said Simon J. Murphy was the sole owner of all the issued and outstanding shares of the capital stock of said Murphy Oil Company, although certain persons, to wit, William H. Murphy, William Plotts, defendant Edmund W. Bacon, and Frank C. Owens, each held one share of said capital stock in his name, but solely for the purpose of qualifying the respective holders thereof to be and act as a director of said Murphy Oil Company; the one share each held by said last named persons being in truth and in fact the property of said Simon J. Murphy.

7. As plaintiff is informed and believes, and upon such information and belief alleges, the drilling of said well No. 1, in the first instance by said Simon J. Murphy, and, after his assignment of said lease to defendant Murphy Oil Company, by said Murphy Oil Company, was so proceeded with, pursuant to the terms of the aforesaid lease, that November 1, 1904, or shortly prior thereto, defendant Murphy Oil Company had struck oil in said well in paying quantities. Said defendants for the purpose, and with the intent, of cheating and defrauding said Domingo Bastanchury, as hereinafter alleged, concealed from said Bastanchury the fact that oil had been struck in said well, and used sundry means and devices for the prevention of said well coming in and of said well flowing oil; among others, upon and according to the information and belief of plain-

tiff, by keeping said well full of water, and so that the flow of oil therefrom would be, and was, restrained by the weight of a column of water of the approximate height of 3500 feet. As plaintiff is informed and believes, and upon such information and belief alleges, after said well had been drilled to the depth of about 3500 feet, and after the same had been drilled through about fifty feet of good, rich oil-sand, and while said well was prevented from flowing and producing oil by the weight of the column of water aforesaid, defendant Murphy Oil Company shut down work on said well, placed a watchman in charge thereof, capped *said* [73] said well with mechanical appliances adapted to the purpose of preventing, and which did prevent, the flow of oil and gas therefrom, and caused sundry persons who had been employed in the drilling of said well to make statements to sundry persons who inquired as to what had been encountered in drilling said well, and to noise abroad the rumor, that said well was a dry hole and that no oil had been struck therein.

On or about November 5, 1904, and within a few days after said well had been so shut down, defendant Edmund W. Bacon, who was at said time secretary of defendant Murphy Oil Company and purchasing agent of said defendant, at the residence of said Domingo and Maria Bastanchury, in the absence of said Domingo, for the purpose of inducing said Domingo Bastanchury to sell to defendant Murphy Oil Company a part of the land described in

said lease, including that part thereof on which said well was located, and of inducing said Domingo to cancel said lease, falsely represented and stated to said Maria Bastanchury that the said well was a failure, that it was a dry hole, that there was no oil in it, that defendant Murphy Oil Company had abandoned further work on it, that there was water in said well but no oil, but that the water therein was salty; and said Bacon then and there further stated and represented to said Maria Bastanchury that said Murphy Oil Company would sell to said Domingo Bastanchury, pursuant to the provisions of the said lease, the casing in said well for $10,000.00 should said Domingo desire to purchase the same. Said Maria Bastanchury thereupon reported the false statements above alleged of said Bacon to said Domingo Bastanchury, and also said Bacon's offer on behalf of defendant Murphy Oil Company to sell the casing in said well to said Domingo for $10,000.00. Said Murphy Oil Company had authorized and instructed said Bacon to make the said false representations and the said offer for the purpose and to the end that the said offer might be rejected, [74] but that, by the making of the same said Domingo Bastanchury, and his said wife Maria, should be induced to believe and be convinced that said well was a failure, that no oil had been struck therein, that said Murphy Oil Company proposed to abandon the same; and defendant Murphy Oil Company caused said Bacon to offer the casing in said well to said Bastanchury well know-

ing that a well of salty water would be valueless to him, and contriving and intending by such offer to induce him to believe that said Murphy Oil Company proposed to forfeit its said lease and abandon the business of exploring the real property described therein for the discovery and production of oil or gas. A few days after said visit said Bacon returned to the residence of said Bastanchurys and was informed by said Maria that said Domingo Bastanchury would not purchase the casing in said well at the price of $10,000.00, whereupon said Bacon, in furtherance of the aforesaid purpose of said Murphy Oil Company of inducing said Domingo Bastanchury to sell to said defendant a part of the land described in said lease, including that part thereof on which said well was located, and of inducing said Domingo to cancel said lease, stated and represented to said Maria Bastanchury, (who was then and there acting on behalf of said Domingo), that defendant Murphy Oil Company was unwilling to proceed further with the drilling of wells for the discovery or production of petroleum oil or gas on the lands covered by said lease, but that said defendant would be willing to buy approximately one thousand acres of the lands covered by the said lease, including the land upon which said well was located, and would pay therefor the price of twenty-five dollars per acre. Thereupon said Maria Bastanchury reported the said offer of said Bacon to said Domingo, who, relying on and believing all of the aforesaid statements and representations of said

Bacon, and believing that no oil had been [75] struck in said well, instructed said Maria to offer, on behalf of said Domingo, to sell certain parts of his said lands, aggregating about 2000 acres, which he called the "bluff" or "hilly lands" and which included the land on which said well was drilled. Negotiations with respect to such purchase continued between defendant Murphy Oil Company, acting through said Bacon, and said Bastanchury for a period of approximately two weeks; and said negotiations resulted in the agreement of said Domingo Bastanchury to sell to defendant Murphy Oil Company, and, by the instruction of said defendant, to convey the same by a deed executed by said Domingo and Maria Bastanchury to said Bacon, for the price of thirty-five dollars per acre, 2240 acres of the lands covered by the said lease, described as follows, to wit:

All of Sections Eighteen (18) and Twenty (20); South Half (S½) and South Half (S½) of North Half (N½) of Section Seventeen (17) and North Half (N½) and Southeast Quarter (SE¼) of Section Nineteen (19), Township Three (3) South, Range Ten (10) West, S. B. M.

upon the following conditions, to wit; that said Bastanchurys should and would release said Simon J. Murphy and said Murphy Oil Company from all the obligations of said lease of April 1, 1903, and join with said Murphy Oil Company in cancelling the same, and that said Bacon should and would execute a grazing lease, for grazing purposes only

to said Bastanchurys upon two thousand acres of the land for the period of ten years, at a rental of one thousand dollars per year.

8. Relying upon and believing the false representations and statements of defendant Murphy Oil Company, made by and through defendant Bacon as in paragraph 7 of this complaint alleged, said Domingo Bastanchury sold to defendant Murphy Oil Company the said 2240 acres of land described in paragraph 7 here- [76] of, and at the request of defendant Murphy Oil Company, said Domingo and Maria Bastanchury conveyed the same to defendant Edmund W. Bacon by deed dated December 15, 1904, executed to said Bacon by said Bastanchurys in the following words and figures:

THIS INDENTURE, Made the fifteenth day of December, in the year of our Lord one thousand nine hundred and four, BETWEEN Domingo Bastanchury and Maria Bastanchury, his wife, of Fullerton, California, the parties of the first part, and Edmund W. Bacon of Whittier, California, the party of the second part,

WITNESSETH: That the said parties of the first part, for and in consideration of the sum of One Thousand ($1000.00) Dollars in Gold Coin of the United States of America to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain and sell, convey and confirm unto the said party of the second part and to his heirs and assigns forever, all that certain real prop-

erty situate in the County of Orange, State of California, and particularly described as follows:

All of Sections Eighteen (18) and Twenty (20); South Half (S½) and South Half (S½) of North Half (N½) of Section Seventeen (17) and North Half (N½) and Southeast Quarter (SE¼) of Section Nineteen (19), Township Three (3) South, Range Ten (10) West, S. B. M.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD all and singular the said premises, together with the appurtenances, unto the said party of the second part and to his heirs and assigns forever.

IN WITNESS WHEREOF the said parties of the first part have hereunto set their hands and seals the day and year in this indenture first above written.

DOMINGO BASTANCHURY [Seal]
By MARIA BASTANCHURY,
his atty. in fact.
MARIA BASTANCHURY [Seal]

State of California,
County of Los Angeles,—ss.

On this 16th day of December, in the year of our Lord, one thousand nine hundred and four, before, me, N. W. Thompson, a Notary Public in and for

said County of Los Angeles, State of Calif- [77] ornia, residing therein, duly commissioned and sworn, personally appeared Maria Bastanchury, wife of Domingo Bastanchury, known to me to be the person described in and whose name is subscribed to the foregoing instrument, and she acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] N. W. THOMPSON,
Notary Public in and for the County of Los Angeles, State of California.

State of California,
County of Los Angeles,—ss.

On this 16th day of December, in the year of our Lord one thousand nine hundred and four, before me, N. W. Thompson, a Notary Public in and for said County of Los Angeles, residing therein, duly commissioned and sworn, personally appeared Maria Bastanchury, known to me to be the person whose name is subscribed to the within instrument as the attorney in fact of Domingo Bastanchury, and acknowledged to me that she subscribed the name of Domingo Bastanchury thereto as principal, and her own as attorney in fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] N. W. THOMPSON,
Notary Public in and for the County of Los Angeles, State of California.

A full, true and correct copy of the original recorded at the request of Grantee the 4th day of January, A. D., 1904, at 32 min. past 2 o'clock p. m. George E. Peters, County Recorder, by W. S. Gregg, Deputy."

Said deed was acknowledged by said Bastanchurys December 16, 1904, so as to entitle the same to be recorded, and was recorded at the request of said Bacon January 4, 1905, in the office of the county recorder of said county of Orange. Relying upon and believing the said false representations and statements of defendant Murphy Oil Company made by and through defendant Bacon, and as part of the same transaction with their said conveyance to defendant Bacon above mentioned, and in fulfilment of [78] the bargain relating thereto alleged in paragraph 7 of this complaint, said Domingo Bastanchury and Maria Bastanchury executed an instrument in writing to defendant Murphy Oil Company which was attached to said indenture of lease dated April 1, 1903, which said instrument in writing was acknowledged so as to be entitled to be recorded, and is in words and figures as follows, to wit:

"KNOW ALL MEN BY THESE PRESENTS: That we, DOMINGO BASTANCHURY and MARIA BASTANCHURY, husband and wife, of the County of Orange, State of California, and the MURPHY OIL COMPANY, a corporation organized and existing under the laws of the State of California, the assignee of Simon J. Murphy, do

hereby, for and in consideration of the sum of one dollar each in hand to the other paid, receipt whereof by each is hereby acknowledged, do hereby cancel the within indenture of lease; and said Murphy Oil Company, assignee of Simon J. Murphy, the lessee in said annexed lease mentioned, doth hereby surrender and yield up, on the same date hereof, unto the within named Domingo Bastanchury and Maria Bastanchury, the lands and premises in said lease mentioned, and the term of years therein yet to come, with all its right, title and interest thereto; and said Domingo Bastanchury and Maria Bastanchury do hereby acknowledge that the said within lease is hereby mutually terminated, and that they have received full satisfaction for all benefits which were to accrue to them under the terms of said lease, and said Simon J. Murphy and said Murphy Oil Company are hereby fully released and exonerated from all and every obligation in said lease contained upon their part to be kept and performed, and do hereby acknowledge full satisfaction of all demands which the said Domingo Bastanchury and Maria Bastanchury have or might have against the said Simon J. Murphy and said Murphy Oil Company, corporation aforesaid, or either of them, by reason of any of the covenants, conditions, stipulations or agreements in said lease contained or referred to.

IN WITNESS WHEREOF, the said Domingo Bastanchury and Maria Bastanchury have hereunto set their hands and seals the 24th day of December, A. D. 1904, and said Murphy Oil Company,

by resolution of its Board of Directors thereunto duly authorizing, hath hereunto caused its corporate name to be signed and its corporate seal affixed by its Secretary, the 24th day of December, 1904.

DOMINGO BASTANCHURY [Seal]
By MARIA BASTANCHURY,
his Atty in fact. [79]
MARIA BASTANCHURY [Seal]
MURPHY OIL COMPANY,
By EDMUND W. BACON,
Its Secretary. [Seal]

State of California,
County of Los Angeles,—ss.

On this 24th day of December in the year one thousand nine hundred four before me, N. W. Thompson, a Notary Public in and for said County of Los Angeles, residing therein, duly commissioned and sworn, personally appeared Maria Bastanchury, known to me to be the person whose name is subscribed to the within instrument, as the Attorney in fact of Domingo Bastanchury and acknowledged to me that she subscribed the name of Domingo Bastanchury thereunto as principal and her own name as Attorney in fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official Seal the day and year in this Certificate first above written.

N. W. THOMPSON,
Notary Public in and for said Los Angeles County, State of California.

Acknowledgment—
Attorney in Fact. [Seal]

State of California,
County of Los Angeles,—ss.

On this 24th day of December in the year of our Lord One Thousand Nine Hundred four, before me, N. W. Thompson, a Notary Public in and for said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared Maria Bastanchury known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

[Seal] N. W. THOMPSON,
Notary Public in and for the County of Los Angeles,
State of California.

State of California,
County of Los Angeles,—ss.

On this 24th day of December in the year of our [80] Lord One Thousand Nine Hundred four, before me, N. W. Thompson, a Notary Public in and for said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared, Edmund W. Bacon, ~~known to me to be the President and~~ known to me to be the Secretary of the Murphy Oil Company, the Corporation that executed the within instrument, and acknowledged to me that such Corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

[Seal] N. W. THOMPSON,

Notary Public in and for the County of Los Angeles, State of California."

As part of the same transaction, said Bacon, by indenture of lease, dated December 20, 1904, duly acknowledged December 24, 1904, so as to entitle the same to be recorded, and recorded at the request of said Domingo Bastanchury January 9, 1905, in the office of said county recorder of Orange County, did lease to said Bastanchurys, for the term of ten years, two thousand acres of said 2240 acres for grazing purposes only, at the yearly rental of $1,000.00 in gold coin of the United States, payable on the 20th day of December in each year, which said indenture of lease is in the following words and figures:

"THIS INDENTURE, Made and entered into this 20th day of December, 1904, by and between Edmund W. Bacon of Whittier, County of Los Angeles, State of California, the party of the first part, and Domingo Bastanchury and Maria Bastanchury, husband and wife, of the County of Orange, State of California, parties of the second part, WITNESSETH:

That the said party of the first part hath let, and by these premises doth demise and let unto the said parties of the second part, and said parties of the

second part have hired and taken, and by these presents do hire and take of and from the said party of the first part, all that certain real property lying and being situate in the County of Orange, State of California, and particularly described as follows:

All of the South Half (S½) of Section Seventeen (17); all of Section Eighteen (18) excepting that portion described as follows:

Commencing at a point on the west line of Section Eighteen (18), Township Three (3) South, Range Ten (10) W., S. B. M., four hundred and [81] fifty-three (453) feet south of an iron county post on the line between the counties of Los Angeles and Orange; thence North three thousand one hundred thirty-three and 8/10 (3133.8) feet to a 4x4 redwood post set by Charles T. Healy for the northwest corner of Section Eighteen (18), Township Three (3) South, Range Ten (10) West; thence South 89° 51′ East five thousand two hundred and eighty (5280) feet; thence South 0° 11′ East nine hundred and seventeen and 7/10 (917.7) feet to a point, said point being north of 0° 11′ West four hundred one and 3/10 (401.3) feet from a 2x4 redwood post set by Charles T. Healy; thence South 82° 15′ West two thousand three hundred three and 9/10 (2303.9) feet; thence South 28° 21′ West seven hundred fifty-seven and 5/10 (757.5) feet; thence South 14° 4′ West six hundred forty-four and 8/10 (644.8) feet; thence South 76° 9′ West six hundred (600) feet; thence North 89° 51′ West one thousand one hundred sixty and 1/10 (1160.1) feet; thence

South 58° 45′ West 872.5 feet to the place of beginning, containing two hundred and ten (210) acres of land;

All of the North Half (N½) and Southeast Quarter (SE¼) of Section Nineteen (19);

All of Section Twenty (20) excepting a rectangular piece of land containing thirty (30) acres in the Southeast corner of said Section Twenty (20), extending one thousand eight hundred and fifty (1850) feet north of the southeast corner of Section 20 and seven hundred six and 37/100 (706.37) feet west of the southeast corner of said Section 20; all in Township Three (3) South, Range Ten (10) West, S. B. M.

Said parcels hereinbefore described containing as a whole two thousand (2000) acres of land.

With the appurtenances for the term of ten (10) years from and after the first day of January, 1905, at a yearly rent or sum of One Thousand Dollars ($1000) in gold coin of the United States payable on the 20th day of December in each year. The said party of the first part hereby acknowledges that he has received the rent for the year 1905 at the time of the execution and delivery of this instrument. And it is agreed that if any rent shall be due and unpaid, or if default shall be made in any of the covenants, stipulations, conditions and agreements herein contained, then it shall be lawful for the said party of the first part to re-enter said premises and remove all persons therefrom and terminate this lease.

And the said parties of the second part do hereby covenant to pay to the said party of the first part the said rent herein reserved in the manner and at the time herein specified, time, with respect to said payments of annual rent, being of the essence of this agreement.

And the said parties of the second part likewise covenant and agree not to assign this lease [82] nor sublet the said premises without the written consent of the said party of the first part first had and obtained, and that at the expiration of the said term, or any sooner termination of this lease, the said parties of the second part will quit and surrender the premises hereby demised in as good order and condition as reasonable use thereof will permit, damages by the elements excepted; and if the said parties of the second part shall hold over the said term with the consent, expressed or implied, of the party of the first part, such holding shall be construed to be a tenancy only from month to month.

It is further agreed and understood by and between the parties hereto that the use of the said premises by the said parties of the second part is limited to the surface of said land for grazing purposes only, and that no other use of said land by said parties of the second part shall be made than for such grazing. And said party of the first part reserves to himself, his heirs, executors, administrators and assigns, the right at all times to enter in and upon all or any part of said land at any time during the term of said lease that he or they may

see fit for the purpose of constructing roadways and pipe lines over and across said lands and erecting and maintaining on said lands derricks or other apparatus for use in drilling for oil or pumping oil therefrom, and maintaining upon said lands machinery, tools, drilling apparatus and such other apparatus as may be convenient or necessary to said party of the first part in carrying on and conducting upon said lands the general business of drilling for oil thereon, pumping and producing oil therefrom, and transporting or removing such oil from and off said lands, and the erection and maintaining on said premises of such buildings as may be useful, convenient or necessary to the said party of the first part in carrying on said oil producing operations and the business connected therewith.

And said party of the first part reserves to himself from the effect of this lease the right to himself, his heirs, executors, administrators and assigns, and all his or their employees and others transacting business with him or them upon said premises, to a free and uninterrupted ingress and egress to and from the said lands; and said party of the first part likewise reserves to himself, his heirs, executors, administrators and assigns, the right to erect and maintain at all times upon said premises, or upon such portions thereof as he or they may elect, tankage, reservoirs, or other receptacles for the purpose of storing oil therein.

And said parties of the second part in using the said leased premises, for grazing purposes as aforesaid, accept the use thereof for such purposes at their own risk with respect to any injury or accident that may happen to them, their servants, agents or employes or property, [83] and said parties of the second part hereby expressly waive all claim for damages against the said party of the first part for any injuries to themselves, their agents, servants, employes, stock, cattle, or other property which may happen in the use of said demised premises by said parties of the second part, and from any damages which may arise or be occasioned by the operations which shall be carried on upon said premises by said parties of the first part.

And said parties of the second part hereby covenant and agree to save and hold harmless at all times the said party of the first part from any damages or injuries which may happen or be caused to the said parties of the second part, their agents, servants, employes, stock, cattle or other property by reason of the operations which shall or may be carried on by said party of the first part upon said leased premises.

It is further agreed and understood that this instrument and all of its provisions shall be binding upon the heirs, executors, administrators and assigns of the respective parties.

IN WITNESS WHEREOF, the said parties of the first and second part have hereunto set their

hands and seals the day and year *in* first above written.

Executed in duplicate.

EDMUND W. BACON [Seal]
DOMINGO BASTANCHURY [Seal]
By Maria Bastanchury,
his attorney in fact.
MARIA BASTANCHURY [Seal]

State of California,
County of Los Angeles.—ss.

On this 24 day of December in the year of our Lord one thousand nine hundred and four, before me, N. W. Thompson, a Notary Public in and for said County of Los Angeles, residing therein, duly commissioned and sworn, personally appeared Maria Bastanchury, known to me to be the person whose name is subscribed to the within instrument as the attorney in fact of Domingo Bastanchury, and acknowledged to me that she subscribed the name of Domingo Bastanchury thereto as principal, and her own name as attorney in fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] N. W. THOMPSON,
Notary Public in and for said Los Angeles County, State of California. [84]

State of California,
County of Los Angeles.—ss.

On this 24 day of December, in the year of our Lord one thousand nine hundred and four, before me, N. W. Thompson, a Notary Public in and for said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared Edmund W. Bacon and Maria Bastanchury, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] N. W. THOMPSON,
Notary Public in and for the County of Los Angeles, State of California.

A full true and correct copy of the original recorded at the request of Domingo Bastanchury Jan. 9, 1905, at 43 min. past 1 P. M.

GEO. E. PETERS, Recorder,
Justine Whitney, Deputy."

By indenture dated January 9, 1905, said Edmund W. Bacon and Anna Bacon, his wife, granted and conveyed to defendant Murphy Oil Company the real property conveyed as above alleged to said Bacon by said Bastanchurys; which said indenture was duly acknowledged so as to entitle the same to be recorded, and was, at the request of defendant Murphy Oil Company recorded in the office of said

county recorder of said county of Orange November 13, 1907, and was and is in the following words and figures:

"THIS INDENTURE, Made the 9th day of January, in the year of our Lord one thousand nine hundred and five, between EDMUND W. BACON and ANNA BACON, his wife, of Whittier, California, the parties of the first part, and Murphy Oil Company, a corporation organized and existing under the laws of the State of California, having its principal place of business in Whittier, California, the party of the second part,

WITNESSETH: That the said parties of the first part for and in consideration of the sum of Ten Dollars in Gold Coin of the United States of America to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bar- [85] gain and sell, convey and confirm unto the said party of the second part, and to its successors and assigns, forever, all of that certain real property situate in the County of Orange, State of California, and particularly described as follows:

In the Ranchos La Habra, Los Coyotes and San Juan Cajon de Santa Ana, all of Sections Eighteen (18) and Twenty (20); the South Half (S½) and South Half (S½) of the North Half (N½) of Section Seventeen (17); the North Half (N½) and Southeast Quarter (SE¼) of Section Nineteen (19); all in Township Three (3) South, Range Ten (10) West, S. B. M., estimated to contain 2240

acres; reserving therefrom for roads, railroads and ditches, a strip of land 30 feet wide along, adjoining and each side of the township and section lines, and a strip of land 20 feet wide along, adjoining and each side of the quarter section lines.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD all and singular the said premises together with the appurtenances unto the said party of the second part, and to its successors and assigns forever.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals the day and year in this indenture first above written.

EDMUND W. BACON (SEAL)
ANNA BACON (SEAL)

Signed, sealed and delivered in the presence of
M. T. Owens.

State of California,
County of Los Angeles.—ss.

On this 12th day of January, in the year of our Lord one thousand nine hundred and five, before me, M. T. Owens, a Notary Public in and for the County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared Edmund W. Bacon and Anna Bacon, his wife, known to me to be the persons described in and whose names

are subscribed to the foregoing instrument, and they acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] M. T. OWENS,
Notary Public in and for the County of Los Angeles, State of California.

I, EDMUND W. BACON, Secretary of the Murphy Oil [86] Company, a corporation, grantee in the within deed, do hereby certify that the capital stock of said corporation is divided into 20,000 shares of the par value of One Hundred Dollars ($100) each, all of which stock is outstanding; that as shown by the stock books of said corporation, the said shares of stock are now held by the following named persons to the number set opposite their names:

Simon J. Murphy	19,996
William H. Murphy	1
William Plotts	1
Edmund W. Bacon	1
Frank C. Owens	1
Total	20,000 shares

WITNESS my hand this 9th day of January, 1905.

EDMUND W. BACON.

State of California,
County of Los Angeles.—ss.

On this 12th day of January, in the year of our Lord one thousand nine hundred and five, before me, M. T. Owens, a Notary Public in and for said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared Edmund W. Bacon, Secretary of Murphy Oil Company, known to me to be the person in and whose name is subscribed to the foregoing instrument, and he acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] M. T. OWENS,
Notary Public in and for the County of Los Angeles, State of California.

I, Simon J. Murphy, owner and holder of more than two-thirds of the outstanding stock of the Murphy Oil Company, a corporation, grantee in the within deed, do hereby consent to the purchase by said corporation of the lands described in said deed, and hereby ratify said deed.

SIMON J. MURPHY.

(William H. Murphy) as to S. J. M.

State of Michigan,
County of Wayne.—ss.

On this 26th day of January, in the year of our Lord one thousand nine hundred and five, be- [87]

fore me, a Notary Public in and for the said County of Wayne, residing therein, duly commissioned and sworn, personally appeared Simon J. Murphy, known to me to be the person described in and whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

[Seal] WILLIAM H. WETHERBEE,
Notary Public in and for Wayne County,
State of Michigan.

My commission expires Jany. 8, 1907.

A full, true and correct copy of the original recorded at the request of the Murphy Oil Company November 13, 1907, at 13 min. past 2 P. M.

GEO. E. PETERS, Recorder.
Deputy."

9. At the time when said defendant Murphy Oil Company, through defendant Bacon, represented to said Domingo Bastanchury, as alleged in paragraph 7 of this complaint that said well No. 1 was a failure, that it was a dry hole, that there was no oil in it, that said Murphy Oil Company had abandoned further work on it, and that the water therein was salty, both defendant Murphy Oil Company and defendant Bacon well knew that said representations, and each of them, were untrue, and they and each of them then well knew that said well was a successful oil well, that the water encountered in drilling it was not salty water, and that said well had pene-

trated rich oil sand and had struck oil. Said defendants, and each of them, made said false representations and statements to said Domingo and Maria Bastanchury for the purpose of inducing said Domingo Bastanchury to cancel said indenture of lease dated April 1, 1903, and to surrender his rights thereunder, and to sell to defendant Murphy Oil Company a large acreage of his said lands for a price far less than said lands were worth, and far less than said Domingo Bastanchury would have accepted therefor had he [88] known that oil had been struck in said well.

10. At no time during the negotiations of said Bacon with said Bastanchurys for the purchase of said 2240 acres of land did said Bacon or said Murphy Oil Company, either through said Bacon or otherwise, inform said Domingo and Maria Bastanchury, or either of them, that oil or oil sand had been struck in said well, or that the water in said well was not salt water, and said Domingo Bastanchury sold and said Domingo and Maria Bastanchury conveyed said land, as in paragraphs 7 and 8 of this complaint alleged, believing that said well was a dry hole and a failure, and that said Murphy Oil Company had failed to strike oil therein.

11. Neither said Domingo Bastanchury nor said Maria Bastanchury had any knowledge, information, notice or suspicion that said Murphy Oil Company had struck oil in said well No. 1 prior to the time when said Bacon made said representations, or of the falsity of any of the aforesaid state-

ments and representations of the said Bacon during the times when said Bacon was negotiating for the purchase of said 2240 acres of land, or prior to the time when said Bastanchurys conveyed said 2240 acres of land to said Bacon; nor did they, or either of them, have any such knowledge, information, notice or suspicion at any time during the lifetime of said Domingo; nor did said Maria Bastanchury have any such knowledge, information, notice or suspicion at any time prior to February 18, 1918. Said Domingo Bastanchury did not at any time know and had not at any time any notice, information or suspicion that at the time said Bacon made said false representation on behalf of defendant Murphy Oil Company and purchased said lands on said defendant's behalf, both said Bacon and said Murphy Oil Company well knew that said Murphy Oil Company had struck oil in paying quantities in said well No. 1, and that the same was a [89] successful oil well, drilled into a paying and productive oil sand; nor did said Maria at any time prior to February 18, 1918, have any such knowledge, notice, information or suspicion. At the time said Murphy Oil Company struck oil in said well No. 1 as aforesaid, and at all times thereafter, both defendants Murphy Oil Company and Bacon purposely concealed from both said Domingo Bastanchury and said Maria Bastanchury during the lifetime of said Domingo, and after his death, concealed from Maria, the fact that said Murphy Oil Company had struck oil in said well No. 1, as here-

inbefore alleged, and that both said defendants knew that said well had encountered oil and had penetrated a productive oil sand prior to the making of said false representations set forth in paragraph 7 of this complaint by said Bacon to said Bastanchurys; and, in particular, said defendants, to render such concealment the more effective, did the following acts, as plaintiff is informed and believes and upon such information and belief alleges, to-wit:

Prior to said Bacon approaching said Bastanchurys with respect to a proposed sale of the casing in said well No. 1 to said Domingo Bastanchury, as alleged in said paragraph 7, said Murphy Oil Company, in drilling said well No. 1, kept said well full of water covering the oil strata penetrated by said well, and thereby preventing the escape and the flow therefrom of oil and gas; and said defendants caused sundry persons who inquired as to whether oil had been encountered in said well to be told that the same was a dry hole and an unsuccessful well. Traces of oil which had escaped from said well were concealed by defendants by covering the same with brush; and the scum of oil on the water flowing therefrom was burned at night by said defendants, to the end that neither said Bastanchurys or any passerby might see evidences around said well that oil had been struck therein. After the said sale and conveyance of said [90] 2240 acres, as alleged in paragraphs 7 and 8 of this complaint, and about the end of the month of January, 1905, said Murphy Oil Company commenced

the erection of a derrick made preparations to drill and commenced the drilling of a second well on said 2240 acres about three-quarters of a mile to the eastward of said first well, and proceeded with the drilling of said second well until on or about July, 1906, at or about which time the drilling of said second well was finished; said second well is herein for brevity referred to as well No. 2. About the time said well No. 2 was so finished, said Murphy Oil Company cleaned out said well No. 1, and thereupon said well No. 1 became a flowing oil well and thereafter produced great quantities of oil.

12. Said Domingo Bastanchury did not at any time, nor did said Maria Bastanchury at any time prior to February 18, 1918, know or suspect that defendant Murphy Oil Company had struck oil in said first well No. 1 before the making by said Bacon of the aforesaid false and fraudulent representations, nor did Domingo Bastanchury at any time know or suspect, nor did said Maria Bastanchury at any time prior to February 18, 1918, know or suspect that defendants, Murphy Oil Company and Edmund W. Bacon, knew, at the time said false and fraudulent representations were so made, that oil had been struck in said well; but, to the contrary, said Domingo Bastanchury at all times, and Maria Bastanchury at all times prior to February 18, 1918, supposed and believed that said Murphy Oil Company had, after the completion of said well No. 2 deepened said well No. 1, and by such deepening, for the first time, and not before,

struck oil therein. Said Domingo Bastanchury did not at any time, nor did said Maria Bastanchury at any time prior to February 18, 1918, know or suspect that, at the time when said Bacon so made said false representations and said Domingo Bastan- [91] chury sold, and conveyed to said Bacon, said twenty-two hundred and forty acres of land, said Bacon and said Murphy Oil Company both well knew that oil had been struck in the drilling of said well No. 1, nor did said Domingo Bastanchury at any time, know or suspect, or have any reason to suspect, nor did said Maria Bastanchury at any time prior to February 18, 1918, know or suspect, or have any reason to suspect, that any of the aforesaid representations of said Bacon were false.

13. The commission of the acts of fraud herein alleged was discovered in manner following, to-wit: February 18, 1918, one C. E. Tower was drilling a well for the discovery and production of water on certain lands in which one Gaston A. Bastanchury, a son of said Domingo Bastanchury and said Maria Bastanchury, was interested, at a point about three miles distant from said well No. 1. When said water well had been drilled to a depth of about 200 feet said Tower pulled the drilling tools out of said well and found a ball of shale in the mud scow, which he, later on said day, exhibited to said Gaston A. Bastanchury and told him (said Gaston) that he (said Tower) believed that there was oil under the land on which he was drilling said water well; and in a conversation, which then and there ensued between said

Tower and said Gaston A. Bastanchury, mention was made of a certain well located in said Orange County (known as the Birch well) concerning which certain persons interested therein claimed that they had been defrauded in parting with their interests, by reason of the concealment from them that oil had been struck in said well, and said Tower further stated to said Gaston A. Bastanchury, in referring to said claims of fraud made by such persons, "That is no worse than what the Murphy Oil Company did to your folks." Said Gaston thereupon inquired of said Tower as to what he (said Tower) knew concerning what the Murphy Oil Company had done to said Gaston's relatives; [92] to which said Tower replied that he had heard a number of persons state that the family of said Gaston had been "skinned" out of their land, and stated that he, said Tower, believed that he could find a number of witnesses to substantiate the fact that there were good indications of oil in the well that had been drilled upon their said land at the time said Domingo Bastanchury sold said land to defendant Murphy Oil Company.

Said Tower, then and there further stated to said Gaston that he (said Tower) had, before the sale of said real property to defendant Murphy Oil Company, seen where oil had been thrown on the roof of the derrick of said well No. 1 by the drilling cables, and said Tower furnished said Gaston with the names of other persons who had seen indications of the existence of oil in said well No. 1 prior to said sale. Soon thereafter said Gaston informed plaintiff of the aforesaid statements of said

Tower, and thereupon plaintiff consulted counsel with respect to said statements, and was advised that an investigation of the facts relative to the discovery of oil in said well No. 1 should be made. Plaintiff employed a competent investigator, who, with the assistance of said Gaston, made an investigation of said facts by interviewing former employees of defendant Murphy Oil Company, who had worked on said well, and divers and sundry other persons experienced in the oil business who had visited said well while it was being drilled, and learned from said persons, and through said investigation, that prior to said well being shut down, on or about November 1, 1904, stains of oil were visible on the roof of the derrick of said well, where the same had been thrown by the operation of the drilling cables; that said well had, when the same was shut down, as aforesaid, been capped with a gate for the purpose of preventing the escape of water and oil therefrom; that there was a good showing of oil in said well at the time said [93] well was shut down and capped; that said well had been kept full of water in order to prevent, as far as possible, the escape therefrom of oil and gas; that, notwithstanding said precautions, water mingled with oil flowed from said well through pipes that had been connected with certain of the casings in said well, and said water and oil had been conducted to a tank and also to two deep sumpholes at some little distance from said well; that before any further work had been done on said

well after the sale of said 2240 acres, alleged in paragraphs 7 and 8 of this complaint, oil from said well had, through the pipe aforesaid, flowed into said tank and sumpholes and there collected in large quantities, and that a large portion of said oil had been pumped therefrom and used by said Murphy Oil Company as fuel in the drilling of the second well, or well No. 2; that the existence of said sumpholes had been concealed by boarding the same over, and covering the same with brush; and that the employes of said Murphy Oil Company had been instructed to open, and did open, the gate with which said well was capped only when the pressure thereon reached a certain point, and were instructed to exercise great care with reference to the escape of water and oil therefrom, and to remove and destroy all evidences of oil flowing from said well; and that the matters and things above mentioned were observed and done prior to any resumption of work on said well after the same had been shut down and capped, as above alleged, on or about November 1, 1904.

During said investigation said Gaston A. Bastanchury discovered and examined a copy of the log of said well No. 1, which said log contained the statements that drilling on said well had started July 1, 1903, and that said well was completed November 20, 1904, that in drilling said well shale had been first encountered between the depths of 1905 and 2200 feet, that at the depth of 2600 feet hot water had flowed over the top of the casing;

that at between 3300 feet and 3430 feet the drilling of said well had en- [94] countered shale and shells—oil and gas, that at between 3430 feet and 3500 feet the drilling of said well had encountered shale and a good show of oil, and that between the depths of 3500 feet and 3560 feet said well had passed through shale and good rich oil sand.

14. Subsequent to the drilling and bringing in of said two wells, Murphy Coyote No. 1 and Murphy Coyote No. 2, as hereinabove alleged, defendant Murphy Oil Company drilled and brought in divers wells producing oil on said 2240 acres of land, the number of which wells is unknown to plaintiff, and sold the oil produced therefrom; but plaintiff is not advised, and cannot state, either the amount of oil so produced and sold, or the prices or amount of money received therefor by defendant Murphy Oil Company. As plaintiff is informed and believes and upon such information and belief alleges, some time in the year 1909 defendant Murphy Oil Company entered into a contract with Standard Oil Company of California, a corporation organized and acting under the laws of the state of California, whereby said Standard Oil Company undertook the operation of said real property for the production of oil therefrom; and thereafter, but at what time plaintiff is not informed and cannot state, the said Murphy Oil Company sold said 2240 acres of land to said Standard Oil Company of California for a consideration of $4,000,000.00, or thereabouts, to be paid to said Murphy Oil Company by said Standard Oil Company, but whether

said consideration was agreed to be paid in cash, or in shares of the capital stock of said Standard Oil Company of California, or partly in cash and partly in stock or other things of value, plaintiff is not informed and cannot state; but said sale reserved to defendant Murphy Oil Company, in addition to said consideration of $4,000,000.00, a royalty of one-fourth of all the oil and gas to be thereafter produced from said real property, which royalty oil and gas defend- [95] ant Murphy Oil Company agreed to sell to said Standard Oil Company of California, and said Standard Oil Company agreed to purchase the same. Plaintiff is further informed and believes, and upon such information and belief alleges, that said Standard Oil Company of California has heretofore paid and rendered to defendant Murphy Oil Company, on account of said consideration of $4,000,000.00, upwards of $2,000,000.00; and that said Murphy Oil Company has also received from sales of its oil, prior to said sale to said Standard Oil Company of California, and from the sales to said Standard Oil Company of the royalty oil and gas aforesaid, large sums of money, the amounts of which payments and receipts are unknown to plaintiff; that said Standard Oil Company has drilled and brought in many wells on said real property which have produced, and many of which are still producing oil and gas, and will continue to produce oil and gas for a long time to come, the number of which wells is unknown to plaintiff; and that said Standard Oil Company will for many years to come continue to drill and bring in wells

producing oil and gas on said real property; and that said Murphy Oil Company will, under the terms of the sale aforesaid, be entitled to the proceeds of the sales of the royalty oil and gas from the production of said wells, which proceeds of sale will, as plaintiff is informed and believes, and upon such information and belief alleges, amount to $15,000,000.00 or upwards; that, as plaintiff is informed and believes, and upon such information and belief alleges, defendant Murphy Oil Company has already obtained moneys and other things of value, by virtue of said sale, from said Standard Oil Company of California, exceeding $5,000,000.00, of which the excess over the sum of $78,400.00 has been obtained by said Murphy Oil Company by means of the fraud, false representations and fraudulent concealments of said Murphy Oil Company in this complaint alleged. [96]

15. As plaintiff is informed, believes, and upon such information and belief alleges, defendant Murphy Oil Company has paid over, transferred and turned over to defendant Edmund W. Bacon, and he has received, a portion of the moneys and things of value received by defendant Murphy Oil Company from its dealings with said 2240 acres of land, as alleged in paragraph 14 of this complaint, but plaintiff is not informed as to, and cannot state what amount of money or other things of value have been so received and obtained by defendant Bacon from defendant Murphy Oil Company.

16. Plaintiff further alleges that the consent of said Domingo Bastanchury to sell said 2240 acres

of land to defendant Murphy Oil Company and to cancel the hereinbefore mentioned lease to said Simon J. Murphy, and to accept said money consideration of $78,400.00 and said lease from defendant Bacon of 2000 acres of said land for grazing purposes, all as hereinbefore alleged, was induced and obtained by the false representations, statements and acts of defendants in this complaint above set forth; and without said false representations, statements and acts of defendant said Domingo Bastanchury would not have consented to said sale and to said cancellation, or to the execution of said deed to defendant Bacon, or the execution of said cancellation of said lease to said Murphy, or the execution, on the part of the lessees therein, of said grazing lease from said Bacon, as alleged in this complaint. Had said Domingo Bastanchury known or believed, prior to said sale and conveyance, that oil sand or oil had been struck in drilling said well No. 1, he would not have sold said 2240 acres to defendant Murphy Oil Company, or cancelled said lease to said Murphy, as herein alleged. And plaintiff further alleges upon and according to her information and belief that at the time of said sale and conveyance of said 2240 acres, said lands were, by reason of the striking of oil and oil [97] sand in said well No. 1, of an actual value of not less than five million dollars.

WHEREFORE, Plaintiff prays judgment that defendants, and each of them, be required to account to plaintiff for all moneys and other things of value obtained by them, or either of them, from or through

their, or either of their, dealings with the 2240 acres of land conveyed by Domingo Bastanchury and Maria Bastanchury to defendant Bacon, as alleged in paragraphs 7 and 8 of this complaint, or from their dealings with the proceeds either of sale or operation of said real property; and that said defendants, and each of them, be required to pay over and deliver to plaintiff all of the moneys, property and things of value obtained by them by reason of the sale of said lands, or the operation thereof, and to assign and transfer to plaintiff all rights of defendants to receive such moneys and things of value in the future; which moneys, rights, property and things of value shall exceed in value of sum of $78,400.00; plaintiff hereby submitting herself to such conditions, order and decree as to the court may seem just and equitable, the nature of the case and the premises considered; that a receiver be appointed to collect and receive from Standard Oil Company of California for the benefit of plaintiff, all moneys and other things of value which said Standard Oil Company of California has become obligated to pay over, or to deliver, to defendants, or either of them, either as royalty, rent, purchase price, or otherwise, of, or with respect to, said 2240 acres of land; and for such other and further relief as to the court may seem meet and agreeable to equity, the premises considered, and for costs.

BENJAMIN E. PAGE & ARTHUR C. HURT,
HUNSAKER, BRITT & EDWARDS,
W. EGBERT MITCHELL,
Attorneys for Plaintiff. [98]

State of California,
County of Los Angeles.—ss.

Maria Bastanchury, being first duly sworn, deposes and says: That I am the plaintiff named in the foregoing complaint; that I have read said complaint and know the contents thereof, and that the same is true of my own knowledge, except as to those matters which are therein stated upon information or belief, and as to those matters, I believe it to be true.

MARIA BASTANCHURY.

Subscribed and sworn to before me this 26th day of August 1918.

(Seal) NINA CLEAVER,
Notary Public in and for said
County of Los Angeles. [99]

[Endorsed]: Filed Aug. 28, 1918. [100]

(Title of Superior Court and Cause.)

SUMMONS.

Action brought in the Superior Court of the State of California, in and for the County of Los Angeles and the Complaint filed in said County of Los Angeles, in the office *at* the Clerk of said Superior Court.

The people of the State of California Send Greetings to:

MURPHY OIL COMPANY, a corporation, and EDMUND W. BACON, defendants.

You are hereby directed to appear and answer the Complaint in an action entitled as above, brought

against you in the Superior Court of the County of Los Angeles, State of California, within ten days after the service on you of this Summons—if served within this County; or within thirty days if served elsewhere.

And you are hereby notified that unless you appear and answer as above required the said plaintiff will take judgment for any money or damages demanded in the Complaint, as arising upon contract or said plaintiff will apply to the Court for any other relief demanded in the complaint.

Given under my hand and seal of the Superior Court of the County of Los Angeles, State of California, this 28th day of August, A. D., 1918.

(Seal) H. J. LELANDE, Clerk,
By E. A. WICKERSHAM,
Deputy Clerk. [101]

[Endorsed]: Filed Sep. 4, 1918. [102]

(Title of Superior Court and Cause.)

ANSWER OF DEFENDANTS.

Defendants for their joint and several answer to the complaint on file in the above entitled action, deny and allege as follows:

I.

Deny upon and according to their information and belief that said Domingo Bastanchury, deceased, never became familiar with the English language or ever spoke or understood the same; and

deny likewise that said decedent entrusted to Maria Bastanchury his wife, the transaction of all of his business which required the use of the English language, or that said wife acted as interpreter for said decedent whenever said decedent had occasion to converse in the English language.

Defendants allege that they have no knowledge, information or belief sufficient to enable them to answer the allegation that said decedent never wrote the English language or to answer whether or not said wife ordinarily acted as interpreter for said decedent when he had occasion to converse in the English language, or to answer whether or not said decedent ordinarily entrusted to said wife the transaction of such of his business as required the [103] use of the English language, or to answer whether or not, during the years 1904 and 1905 said decedent spent a large part of his time away from the residence of himself and his said wife and in the camps of his employees, and basing their denials upon said ground, defendants deny that said wife ordinarily acted as interpreter for said decedent when he had occasion to converse in the English language, and deny that said decedent ordinarily entrusted to said wife the transaction of such of his business as required the use of the English language, and deny that during either of the years 1904 or 1905 said decedent spent any part of his time away from said residence or in said camps, or any of them.

Defendants allege that they have no knowledge, information or belief sufficient to enable them to answer any of the allegations set forth or expressed in said complaint in words as follows:

"Neither said Domingo Bastanchury nor said Maria Bastanchary, at any of the times hereinafter stated, had any knowledge of, or experience in, the business of discovering oil, or determining, whether land contained, or was likely to contain, oil, and neither of them had any knowledge of, or experience in, the business of drilling wells for the discovery or production of oil and gas, or with the appearances or facts which, in the progress of the drilling of such a well, would indicate that oil had been struck."

and basing their denials upon said ground, defendants deny each and every of said allegations.

II.

Defendants allege that they have no knowledge, information or belief sufficient to enable them to answer whether or not said decedent, upon his decease, owned or left any estate within the County of Orange, state aforesaid, or elsewhere, and basing their denials upon said ground, defendants deny that said decedent, upon his decease, owned or left any estate located within said [104] County of Orange, or elsewhere.

Defendants allege that they have no knowledge, information or belief sufficient to enable them to answer the allegation contained in Paragraph 3

of said complaint to the effect that said decedent left a last will and testament dated October 30, 1893, wherein one Orel N. Goldaracena was named as executor, and basing their denials upon said ground, defendants deny that said decedent left such a last will and testament or any last will.

Defendants allege upon and according to their information and belief that said decedent, at the time of his decease, was not the owner or siezed of any estate or interest, legal or equitable, in or to any of the lands described or mentioned in said complaint, or any right of action or claim which had arisen out of or in connection with or accrued in favor of his wife and himself, or either of them, as a consequence of the transaction involving, among other things, the making of the sale and conveyance described in Paragraphs 8 and 9 of said complaint, and likewise deny that any such estate or interest in any part of said lands or any such right of action or claim passed upon the demise of said decedent either by will or by succession from him to any of his personal representatives, or any of his devisees or heirs.

III.

Deny that said well, at any time prior to the conveyance made by decedent and his said wife to defendant Bacon and referred to in said complaint, was drilled to any depth in excess of 3431 feet, or was drilled into or through fifty, or any other number, of feet of good or rich oil sand or any good or rich

oil sand, and deny that said well at any time was prevented from flowing or producing oil by the weight of any column of water or any water contained therein, and deny that said well, even had the same been [105] uncapped and entirely free from water, would have at any time prior to said conveyance to defendant Bacon last mentioned flowed or produced any oil; deny that the acts of shutting down said well, capping the same, and placing a watchman in charge thereof, referred to in said complaint, or either of said acts, was done or performed prior to November 26, 1904; deny that defendants or either of them at any time caused any person or persons to make sundry persons who inquired as to what was encountered in drilling said well, or to anyone, or to noise abroad the rumor that said well was a dry hole or that no oil had been struck therein.

Allege that they have no knowledge, information or belief sufficient to enable them to answer the allegation to the effect that sundry persons who had been employed in the drilling of said well to make statements to sundry persons who inquired as to what had been encountered in drilling said well, and to noise abroad the rumor that said well was a dry hole and that no oil had been struck therein, and basing their denials upon said ground defendants deny said allegation and every part thereof.

Deny that oil in paying quantities or a good show of oil was struck in the well designated No. 1 in

said complaint at any time prior to said conveyance to said Bacon.

Defendants allege that on or about November 26, 1904, the string of inner or 5-5/8 inch casing then in said well became disconnected or separated at the depth of about 1260 feet and that as a consequence of such separation of said string of casing, the water collected outside of said casing, together with the water coming from the formations which fed the space existing between said casing and the outer wall of said well forced its way into the portion of said inner casing located above said point of separation at the lower end of said portion of said casing and [106] caused an overflow of water containing particles or traces of oil at the upper end thereof.

Defendants admit that on the same day or the day thereafter, and soon after said overflow began, there was installed at the top of said 5-5/8 inch casing a gate or cap which was designed to prevent, and in fact did prevent, any further overflow from said inner casing, also that at or about the same time work on said well was suspended and that thereafter and until work upon said well was resumed said cap or gate was maintained for the purpose of preventing, and the same did in fact prevent, said well from overflowing, excepting at such times and to such extent as defendants should and did relieve the restraint imposed by said gate or cap for the purpose of avoiding any excessive pressure by opening said gate.

Defendants allege, however, that work on said well was resumed subsequently and that as a part of said work said string of casing was reunited and that as soon as the same was so repaired said well ceased to overflow; but defendants deny that said well as it then existed and when so repaired produced or was capable of producing oil in paying quantities or in any substantial quantity.

Defendants deny that they or either of them, for the purpose and with the intent, or for the purpose or with the intent of cheating and defrauding or cheating or defrauding said decedent as alleged in said complaint, or otherwise, concealed at any time from said Bastanchurys, or either of them, the fact of any striking of oil in said well or used at any time meanse and devises or any means or devise for the prevention of said well coming in or of said well flowing oil, or kept or at any time kept said well full of water or any water in said well so that the flow of oil there- [107] from would be or was restrained by the weight of said water, or at any time shut down work on said well or placed a watchman in charge thereof, or capped said well with any mechanical appliances or appliance, or caused sundry persons who had been employed in the drilling of said well, or any person, to make statements or any statement to sundry persons, or to any person who inquired as to what had been encountered in the drilling of said well that said well was a dry hole or that no oil had been struck therein, or to noise abroad the rumor that

said well was a dry hole or that no oil had been struck therein; and deny that they or either of them, for any purpose, concealed at any time from said Bastanchurys or either of them, the fact of the striking of any oil in said well struck at or prior to the time of the making by defendants, or either of them, of any of the statements or representations which were or was in fact made by defendants or either of them, and are mentioned in said complaint and alleged therein to be false.

IV.

Deny that defendant Bacon at any time or for any purpose falsely represented or stated to said wife of said decedent that said well was a failure or was a dry hole or that there was no oil in it or that defendant Murphy Oil Company or anyone else had abandoned further work on said well or that there was water in said well but no oil, or that the water therein was salty; deny that said Bacon at any time while acting or pretending to represent or act on behalf of defendant Murphy Oil Company, represented to said wife that said well was a failure or that said defendant had abandoned [108] or proposed to abandon further work on it or that there was no oil in said well or that said defendant would sell to said decedent the casing in said well for $10,000 or that said defendant would sell to said decedent any casing for any price or upon any basis.

Defendants allege that they have no knowledge, information or belief sufficient to enable them to

answer any of the allegations of said complaint to the effect that said wife reported to said decedent that said Bacon had made to her the statements or representations that said well was a failure, that there was no oil in it, that it was a dry hole, and that defendant Murphy Oil Company had abandoned further work on it, that there was water in said well but no oil, and that the water therein was salty; also an offer by said Bacon on behalf of defendant Murphy Oil Company to sell the casing in said well to said decedent for $10,000, and basing their denials upon said ground, defendants deny that said wife reported to said decedent that said offer or any of said statements or representations had been made to her by said Bacon.

Deny that defendant Murphy Oil Company ever authorized, instructed or caused said Bacon to make any offer on behalf of defendant Murphy Oil Company, to sell the casing in said well or any casing to said decedent for $10,000 or for any other price or upon any basis, or to make any of the statements or representations hereinbefore mentioned, or to make any of the statements or representations set forth in said complaint and therein alleged to be false and to have been made by said Bacon to said wife.

Deny that defendant Murphy Oil Company ever authorized, instructed or caused said Bacon to make any offer to said wife for the purpose or to the end that said offer might be rejected, but that by the making of the same said decedent and his wife, or either of them, should be induced to believe or be

convinced that [109] said well was a failure or that no oil had been struck therein or that defendant Murphy Oil Company proposed to abandon said well, and deny that said defendant by any offer which it authorized, instructed or caused said Bacon to make, or any offer which said Bacon made while representing or acting or pretending to represent or act on behalf of said defendant, defendants or either of them contrived or intended to induce said Bastanchurys or either of them to believe that defendant Murphy Oil Company proposed to abandon said well or to abandon the business of exploring, for the discovery and production, or discovery or production, of oil and gas or oil or gas, the lands then covered by said lease of April 1, 1903, or any part thereof, or to believe that said defendant proposed to abandon or forfeit said lease or the leasehold estate created thereby.

Deny that said Bacon at any time or for any purpose stated or represented to said wife that said defendant Murphy Oil Company was unwilling to proceed further in the drilling of wells for the discovery or production of petroleum oil or gas on the lands covered by the lease hereinbefore mentioned, or that said defendant would be willing to buy approximately 1000 acres of the lands covered by said lease, including the land upon which said well was located, and would pay therefor the price of $25.00 per acre, or made to said wife any offer, statement or representation substantially to the effect of either of those last mentioned.

Defendants allege that they have no knowledge, information or belief sufficient to enable them to answer whether or not said wife ever reported to said decedent that said Bacon had stated or represented to her that defendant Murphy Oil Company was unwilling to proceed further with the drilling of wells for oil or gas on the lands covered by said lease, or had stated or represented [110] that said defendant would be willing to buy approximately 1000 acres of said lands including the land upon which said well was located, and would pay therefor the price of $25.00 per acre, and basing their denials upon said ground, defendants deny that said wife reported to said decedent that said Bacon had made to her any such statement or representation.

Defendants allege that they have no knowledge, information or belief sufficient to enable them to answer the allegations of said complaint to the effect that decedent instructed his said wife to offer, on his behalf, to sell to defendant Murphy Oil Company, certain parts of said lands aggregating about 2000 acres, which said decedent called or described as the "bluff or hilly lands" and which included the land upon which said well was drilled, and basing their denials upon said ground, defendants deny that said wife was so instructed by said deecdent.

Deny, upon and according to their information and belief, that decedent in giving to his wife any such instruction believed or relied upon any statement or representation made by said Bacon to the

effect that defendant Murphy Oil Company had abandoned said well or was unwilling to proceed further with the drilling of wells for oil or gas on the lands covered by said lease or that said well was a failure or was a dry hole, or that there was no oil therein; on the contrary, defendants allege, upon and according to their information and belief, that throughout the period during which it is alleged in said complaint the negotiations between said wife and said Bacon therein referred to were carried on, said decedent had notice and knowledge that neither said well nor work thereon had been abandoned, that indications of oil and gas had been encountered in the course of work of drilling said well; also notice and knowledge of the true character of the water found in said well. [111]

Defendants allege that negotiations were had between said decedent, acting by and through his said wife, and the defendant Murphy Oil Company, acting by and through said Bacon, which resulted in an agreement or offer by said decedent to sell to said Murphy Oil Company the 2240 acres of land particularly described in Paragraph 8 of said complaint, in consideration of the surrender by said defendant of said lease of April 1, 1903, together with the leasehold estate created thereby, and the cancellation of said lease, also the further considerations of the sum of $35.00 per acre for said 2240 acres of land, and of a lease for grazing purposes only to said Bastanchurys upon a certain 2000 acres of said land for a period of ten years at a rental of $1000 per year.

Deny that the negotiations had during the year 1904 between defendant Murphy Oil Company, acting by and through said Bacon, and said decedent, acting by and through said wife, in consummation of which or as a result of which the sale and conveyance described in Paragraphs 8 and 9 of said complaint were made, continued for a period of two weeks only; on the contrary, defendants allege that said negotiations continued for many weeks but that the same terminated prior to the month of November, 1904, and long prior to the time when said well No. 1 was shut down and work thereon suspended in the month of November, 1904.

V.

Defendants deny, upon and according to their information and belief, that said decedent made the agreement on his part mentioned in Paragraph 7 of said complaint, or sold to defendant Murphy Oil Company said 2240 acres of land, or made the conveyance mentioned in Paragraph 8 of said complaint in reliance upon or while believing any false representations or statements or representation or statement made by defendant Murphy Oil Company by or through [112] said Bacon, or made by said Bacon while acting for or pretending to act for said defendant.

Deny in like manner that said decedent and his said wife, or either of them, executed or delivered the instrument purporting to cancel and terminate said lease, a copy of which instrument is set forth in said Paragraph 8 of said complaint, while rely-

ing upon or believing any false representations and statements or representation or statement made by defendant Murphy Oil Company by or through said Bacon or made by said Bacon while acting or pretending to act for said defendant.

VI.

Deny that any representation was ever made to said decedent or his said wife that said well No. 1 was a dry hole or that there was no oil in it or that defendant Murphy Oil Company would abandon further work on it, or that said defendant had abandoned further work on said well or had abandoned or forfeited said lease, by defendant Murphy Oil Company by or through said Bacon or by said Bacon while acting or pretending to act on behalf of said defendant Murphy Oil Company, at any time when said defendant or said Bacon knew or believed that said representation was untrue or knew or believed that said well was a successful oil well, or that said well had penetrated rich or any oil sand or had struck oil, or at any time whatever.

Defendants admit that said Bacon did, during the course of said negotiations, represent to said wife that the water in said well was salty, but defendants deny that said representation was made during the month of November, 1904, and allege, on the contrary, that said representation was made long prior to said month; also allege that said representation was true. [113]

Deny that any false representations and statements or representation or statement was ever made

to said decedent or his said wife by defendant Murphy Oil Company through or by said Bacon or by said Bacon while acting or pretending to act on behalf of said defendant, for the purpose of inducing said decedent to cancel said lease or to surrender his rights or any of them thereunder, or to sell to said defendant any of the lands covered by said lease for a price less than said lands were worth, or less than said decedent would have accepted therefor had he known that oil had been struck in said well, or for any purpose.

Deny that these defendants did not at any time prior to the consummation of the sale and conveyance described in Paragraphs 8 and 9 of said complaint, inform said decedent and his said wife that any oil had been encountered in the drilling of said well, and deny, upon and according to their information and belief, that said decedent and his said wife or either of them consummated the said sale and conveyance believing that said well was a dry hole or a failure or that defendant Murphy Oil Company had failed to find any oil in the drilling thereof.

Deny that either said defendant or his said wife was without any knowledge, information, notice and suspicion, or knowledge, information, notice or suspicion, that oil had been found in said well prior to the consummation of said sale and purchase, or of the falsity of such of the matters alleged in said complaint to have been represented and stated to said wife by defendant Murphy Oil Company by or through said Bacon as were in fact made, until the

18th day of February, 1918, or until any time later than the year 1906, and defendants allege, upon and according to their information and belief, that both said decedent and his said wife had been informed prior to the time of the consummation of said purchase and sale [114] and at the time of the said consummation believed that defendant Murphy Oil Company had not abandoned said well or determined to do so, and that the work of drilling said well continued until on or about November 27, 1904, and that some oil had been discovered and was known by defendants to have been discovered in said well before work thereon was suspended.

Deny that either of these defendants knew at any time prior to the consummation of said sale and purchase, that oil in paying quantities had been struck in said well or that said well was a successful oil well or had been drilled into paying or productive oil sand; and defendants allege that oil in paying quantities had not been struck in said well prior to the consummation of said sale, and that up to said time said well was not a successful oil well and had not been drilled into a paying or productive oil sand.

VII.

Deny that defendants or either of them purposely or otherwise concealed at any time from said Bastanchurys or either of them the fact of the striking in said well of any oil struck therein prior to the time of the making of the statements and representations which were in fact made by these defendants or either of them and are mentioned in Para-

graph 7 of said complaint, or prior to the time of the making of any such statement or representation, or the fact that both of these defendants, or either of them, knew that said well had encountered oil or had penetrated a productive or any oil sand prior to the time of the making of said statements and representations, or prior to the making of any of them; and deny that these defendants or either of them, for the purpose of rendering any such concealment the more effective or for any purpose, did at any time keep said well full of water [115] or any water therein covering the oil strata or any oil stratum penetrated by said well, or did, by any such means, prevent or seek to prevent the escape or flow from said well of oil and gas or oil or gass, or did cause sundry persons or any person who inquired as to whether oil had been encountered in said well to be told that the same was a dry hole or an unsuccessful well, or did conceal, by covering the same with brush, any traces or trace of oil which had escaped from said well, or did burn or cause to be burned at night or at any other time any scum of oil on the water flowing from said well, to the end that said Bastanchurys and any passerby might not see evidences around said well that oil had been struck therein, or for any such or similar purpose, or did commence or proceed with or complete the well designated No. 2 in said complaint prior to any resumption of work upon said well No. 1, or did any act whatever.

VIII.

Defendants admit that the well drilled by defendant Murphy Oil Company and designated in said complaint as well No. 2, was, on or about the month of September, 1906, so far finished or completed that the same was capable of producing and did thereafter, and before being drilled to any greater depth, produce large quantities of oil; and deny that at or about the time said well No. 2 was so finished, defendant Murphy Oil Company cleaned out well No. 1 or that following any such cleaning out and as a result thereof said well became a flowing well and thereafter produced great or any quantity of oil, and defendants deny that following the shut-down of well No. 1 occurring in November, 1904, work on said well was not resumed until after said well No. 2 first became a producing well; on the contrary, defendants allege that such work was resumed long prior to said event, and defendants deny that the work done upon [116] said well No. 1 following the resumption of such work, consisted of and amounted to nothing more than the cleaning out of said well No. 1.

Defendants allege that they have no knowledge, information or belief sufficient to enable them to answer whether or not it was supposed or believed by said decedent until his death, or supposed or believed by said wife until February 18, 1918, that the defendants had, after the completion of said well No. 2, or at any time following the month of November, 1904, deepened said well No. 1, and bas-

ing their denials upon said ground, defendants deny that said decedent, until his death or at any time, supposed or believed that after the completion of said well No. 2, or at any time following November 1904, said well No. 1 had been deepened, and deny that his said wife supposed or believed, until February 18, 1918, or at any time, that after the completion of said well No. 2, or at any time following November 1904, said well No. 1 had been deepened.

Defendants deny upon and according to their information and belief that said decedent until his death or at any time supposed or believed that by the deepening of said well No. 1 following November 1904, oil was for the first time struck therein, and likewise deny that said wife supposed or believed, until February 18, 1918, or at any time, that by the deepening of said well No. 1 following the month of November 1904, oil was for the first time developed therein.

Deny, upon and according to their information and belief, that said decedent or his said wife was, at the time said conveyance was made to said Bacon, or at any time, subsequent thereto, without notice or knowledge that both of these defendants knew of the striking of any and all oil struck in said well No. 1 [117] during the year 1904 concurrently with or substantially concurrently with the happening of such event or events; and likewise deny that said decedent or his said wife was at any time subsequent to the year 1906, without knowledge and notice of the falsity of such of the matters alleged in said complaint to have been stated or represented

by said Bacon to said wife as were in fact false, or any of said matters.

IX.

Defendants allege that they have no knowledge, information or belief sufficient to enable them to answer any of the allegations contained in Paragraph 13 of said complaint, other than the recitals therein that Gaston A. Bastanchury is a son of said decedent and his said wife; also the allegation or recital that there was kept or exists or existed a log of said well No. 1 containing certain statements described in said paragraph, also the allegation that the alleged acts of fraud described in said complaint were not discovered until on or about February 18, 1918, and basing their denials upon said ground, defendants deny each and every of said allegations; other than said excepted recitals and allegations; defendants deny upon and according to their information and belief that said alleged acts of fraud or any of them which had any existence in fact or in reality remained undiscovered by said decedent or by his said wife until February 18, 1918; on the contrary, defendants allege upon and according to their information and belief that both said decedent and his said wife had knowledge or notice of all of the facts pointing to or involving said alleged acts of fraud as early as the year 1906; and answering said recitals or allegations concerning said alleged log, defendants allege that no log of said well No. 1 or contemporaneous history of the drilling thereof covering the whole drilling history of the said well [118] or any part thereof was kept or prepared

by or at the direction of these defendants or either of them, or by anyone, and deny that any record in the form of a log of said well or a history of the drilling operations thereon was prepared by or at the direction of these defendants or either of them, or by anyone, earlier than the year 1909.

X.

Defendants deny that during the year 1909, or at any time, a contract was entered into between defendant Murphy Oil Company and Standard Oil Company of California whereby the latter undertook the operation of said real property or any part thereof for the production of oil therefrom, and deny that defendant Murphy Oil Company ever sold 2240 acres of land or any part thereof to said Standard Oil Company.

Defendants admit that defendant Murphy Oil Company did, during the year 1913, sell and convey to said Standard Oil Company certain personal property and articles in the nature of personal property though affixed or appurtenant to the land, together with all of the petroleum oil, natural gas and kindred mineral substances in or under certain lands, including said 2240 acres, as well as other lands located in the said general district, and in and by the same transaction and instrument leased and let unto said Standard Oil Company of California for the term of forty years commencing the first day of December, 1913, all of said lands with the exclusive right to the possession of the same, subject to certain limitations in said instrument

prescribed, together with the exclusive right and privilege of prospecting and drilling for, developing, producing and removing petroleum oil, natural gas and kindred mineral substances in and from said premises during said term, for the price or consideration of $5,500,000, payable [119] from time to time within five years from said last mentioned date, and that said defendant in and by the same transaction and instrument reserved to itself a one-fourth part of the petroleum oil produced and saved by said Standard Oil Company on said premises in excess of 730,000 barrels in any one year during the first five years from said last mentioned date, and a one-fourth part of all the petroleum oil produced and saved by said Standard Oil Company on said premises after said date, also a one-fourth part of all kindred mineral substances, except gas, extracted and marketed by said Standard Oil Company from said premises.

Defendants allege that said transaction was single and entire and was not severable either as to said price or as to the royalty oil reserved as between said 2240 acre tract and the remainder of the lands covered by said transaction; deny that said defendant, by said transaction, agreed to sell to said Standard Oil Company its said royalty oil; deny that by said transaction said defendant reserved to itself any share of the gas which should be thereafter produced from said 2240 acre tract, but defendants admit that as a part of said transaction said Standard Oil Company agreed to pay to defendant Murphy Oil Company two cents for each 1000 cubic

feet of gas, measured on an eight-ounce base, produced and sold off the premises by said Standard Oil Company or used by said Standard Oil Company on other premises than those hereinabove described or in operations not pertaining to the drilling, developing or operation of the premises hereinabove described and not pertaining to the storage or transportation of the products produced from said premises, or in manufacturing or transforming said gas into some other product for either use or sale.

Defendants have no knowledge, information or belief sufficient to enable them to answer whether or not the proceeds [120] of sales of such royalty share of future production of the wells now existing upon said 2240 acre tract, together with such additional wells as may be hereafter and during the term of said lease drilled by said Standard Oil Company, together with the payments to which defendant Murphy Oil Company may hereafter become entitled in virtue of said undertaking or agreement by said Standard Oil Company on account of the future production of gas from said tract, will amount to the sum of $15,000,000 or more, and basing their denials upon said ground, defendants deny that said proceeds will amount to said sum or even to as much as $5,000,000.

Defendants deny that defendant Murphy Oil Company has obtained by means of any fraud and false and fraudulent concealments or representations or any fraud or wrong mentioned in said com-

plaint and of which said defendant is or was guilty, the sum of $5,000,000, or any other sum whatever.

XII.

Defendants deny that defendant Murphy Oil Company has paid over, transferred or turned over to the defendant Edmund W. Bacon, or that the latter has received any portion of the moneys or things of value received by said Murphy Oil Company from its dealings with said 2240 acres of land or any part thereof.

Defendants deny, upon and according to their information and belief, that the consent of said decedent to the transaction referred to in said complaint and of which the sale and conveyance described in Paragraphs 8 and 9 of said complaint was a part, was induced or obtained by the alleged false representations, statements and acts of these defendants in said complaint set forth, or any false representations, statements and acts of these defendants, and likewise deny that without said alleged false representations, statements and acts, or any of them, said [121] decedent would not have consented to said transaction, or would have withheld his consent as to any part thereof.

Defendants deny that said decedent, had he known and believed prior to said sale and conveyance that oil and oil sand had been struck in the drilling of said well No. 1, would not have sold said 2240-acre tract to the defendant Murphy Oil Company or cancelled said oil lease, or would have refused to join in carrying out the transaction above men-

tioned; and deny that if said decedent had had the fullest information concerning the condition of the prospects of said well No. 1, he would have refused to join in carrying out said transaction.

Defendants deny, upon and according to their information and belief, that at the time of the consummation of said transaction or at any time prior thereto said 2240 acres of land had any value, market or actual, in excess of $78,000.

SECOND DEFENSE.

Defendants, for another, separate and second defense to said complaint allege:

That the alleged cause of action set forth in said complaint is barred by the provisions of Section 318 of the Code of Civil Procedure of the State of California.

THIRD DEFENSE.

Defendants, for another, separate and third defense to said complaint allege:

That the alleged cause of action set forth in said complaint is barred by the provisions of Section 319 of the Code of Civil Procedure of the State of California. [122]

FOURTH DEFENSE.

Defendants, for another, separate and fourth defense to said complaint allege:

That the alleged cause of action set forth in said complaint is barred by the provisions of Subdivision 4 of Section 338 of the Code of Civil Procedure of the State of California.

FIFTH DEFENSE.

Defendants, for another, separate and fifth defense to said complaint, allege:

That the alleged cause of action set forth in said complaint is barred by the provisions of Section 343 of the Code of Civil Procedure of the State of California.

SIXTH DEFENSE.

Defendants, for another, separate and sixth defense to said complaint, allege:

That the alleged cause of action set forth in said complaint is barred by the provisions of Section 353 of the Code of Civil Procedure of the State of California.

SEVENTH DEFENSE.

Defendants, for another, separate and seventh defense to said complaint, allege:

That neither plaintiff nor any ancestor, predecessor or grantor of plaintiff, nor said decedent, or his said wife, has been seized or possessed of the premises conveyed to Edwin W. Bacon, as alleged in Paragraph 8 of the complaint, or any part of said premises at any time since the month of January 1905, but that defendant Murphy Oil Company has held and possessed the said premises [123] and every part thereof adversely to the pretended right, title and claim of plaintiff ever since said month of January 1905, under a claim of title in fee, exclusive of any other right.

That said possession and occupancy by said defendant of said premises and every part thereof has been, ever since the month of January 1905, peaceable, continuous, uninterrupted, exclusive, open, notorious and adverse to all the world, including the plaintiff herein and all other persons whatever.

That defendant Murphy Oil Company has so had and enjoyed the possession of said premises and every part thereof ever since the month of January 1905, under claim of title exclusive of any other right, founding such claim upon two instruments, to-wit: that certain conveyance made by Domingo Bastanchury and Maria Bastanchury and described in Paragraph 8 of said complaint, as being a conveyance of said premises, which said conveyance was, on the 4th day of January 1905, recorded in the office of the county recorder of the county of Orange, state of California, also that certain conveyance made by Edmund W. Bacon and Anna Bacon, and described in said Paragraph 8 of said complaint as being a conveyance of the premises in question, which last mentioned conveyance was, on the 13th day of November, 1907, recorded in the office of said county recorder.

That during the whole of said period of occupancy, to-wit: ever since the month of January 1905, and down to and including the present time, said defendant has cultivated and improved said premises in the usual maner and throughout said period said defendant has paid all the taxes, state,

county and municipal, which have been levied and assessed upon said lands and premises or any part thereof. [124]

EIGHTH DEFENSE.

Defendants, for another, separate and eighth defense to said complaint, allege:

That neither plaintiff nor any ancestor, predecessor or grantor of plaintiff, nor said decedent, or his said wife, has been seized or possessed of the premises conveyed to Edwin W. Bacon, as alleged in Paragraph 8 of the complaint, or any part of said premises at any time since the month of January 1905, but that defendant Murphy Oil Company has held and possessed the said premises and every part thereof adversely to the pretended right, title and claim of plaintiff ever since said month of January 1905, under a claim of title in fee, exclusive of any other right.

That said possession and occupancy by said defendant of said premises and every part thereof has been, ever since the month of January 1905, peaceable, continuous, uninterrupted, exclusive, open, notorious and adverse to all the world, including the plaintiff herein and all other persons whatever.

That during the whole of said period of occupancy of said premises, to-wit: ever since the month of January 1905, and down to and including the present time, said defendant has actually occupied the whole of said premises and has cultivated

and improved the same in the usual manner and throughout said period said defendant has paid all the taxes, state, county and municipal, which have been levied and assessed upon said land and premises, or any part thereof. [125]

NINTH DEFENSE.

For another, separate and ninth defense, defendants, upon and according to their information and belief, allege:

That both said decedent and his said wife had, as early as the year 1906, notice or knowledge that prior to the suspension of work upon said well No. 1 on or about November 27th, 1904, oil had been struck in said well in such quantity that the water overflowing said well carried particles or traces of said oil and that on or about said time there was installed upon said well a gate or cap, for the purpose of preventing, and which did for many months thereafter and until work was resumed upon said well, in fact prevent, any further overflow of water and oil from said well excepting at such times and to such extent as defendant Murphy Oil Company permitted the same by opening said gate or cap; also notice or knowledge that said defendant had not at any time abandoned said well; also notice or knowledge that oil flowed from said well from time to time during the years 1904 and 1905, and prior to any resumption of work on said well, and flowed therefrom immediately upon resumption of work thereon.

Defendants likewise allege that said decedent, his heirs, devisees and personal representatives, notwithstanding said notice and knowledge, omitted and failed to make any complaint to or demand upon these defendants or either of them on account of the alleged frauds described in said complaint, or by any action to assert or enforce any right which accrued to said decedent by reason of said frauds, until the commencement of this action, and further allege that by reason of said notice and knowledge and said omission and failure, plaintiff is debarred by laches from the relief prayed in the bill of complaint and from any relief in equity. [126]

TENTH DEFENSE.

Defendants for a further separate and tenth defense, allege:

That at all times prior to the successful bringing in of Well No. 2 mentioned in the complaint, in the year 1906, the premises conveyed to defendant Bacon as mentioned in said complaint, embraced in the tract leased to Simon J. Murphy by the lease dated April 1, 1903, and set forth in said complaint, were what was known as "wild-cat" territory, the oil-bearing character of which could not be determined without the risk of loss of great sums of money and the employment of much skill and labor, and the expenditure of much money without any certainty of success; that for a period of approximately ten years following the commencing of operations under said lease, and until the year 1913, de-

fendant Murphy Oil Company and its predecessor in interest, Simon J. Murphy, made diligent and constant effort, in the beginning to discover oil on said property, and thereafter, to develop the same as paying and commercially valuable oil land; that the development of said land for oil was at all times up to the year 1913 prosecuted with great difficulty and at great expense, and entailed the risk of loss of large sums of money, owing chiefly to the great depth to which it was necessary to drill in order to obtain oil, and owing to the great difficulties and many problems encountered in shutting off the water developed in the wells drilled; that in the year 1913, said defendant granted to the Standard Oil Company of California all of the petroleum oil, gas and other kindred mineral substances contained in or under said lands, as well as certain neighboring lands, and by the same instrument let and leased to Standard Oil Company all of said lands, for a term of forty (40) years from said date, for the purpose of enabling said lessee [127] to prospect and drill for, develop, produce and remove the petroleum oil, natural gas and kindred mineral substances in and from said premises during said term; that said Standard Oil Company thereafter continued the work of developing oil upon said lands, and sank many wells thereon and erected many buildings, appliances, compressors, filters and other structures thereon, until said premises, by reason of said development, were, at the time of the commencement of this action, producing daily many

thousands of barrels of oil and many millions of cubic feet of gas; that by reason of said operations of defendant Murphy Oil Company up to the year 1913, and of the operations of said Standard Oil Company since said time, the value of the lands conveyed to defendant Bacon as aforesaid has been enhanced from a value of Seventy-eight Thousand Dollars ($78,000.00) in the year 1904, to the present value of many millions of dollars; that of the facts in this separate defense alleged, said decedent, during his lifetime, and his heirs, devisees and personal representatives, ever since, as well as theretofore, as these defendants are informed and believe, and upon such information and belief allege, had full notice or knowledge; but defendants further allege that neither said decedent nor any of his heirs, devisees or representatives, otherwise than by the commencement of this action, ever protested against the development of said premises or any part thereof by defendant Murphy Oil Company or said Standard Oil Company, or ever made any complaint to or demand upon either of said companies respecting the rights or claims upon which this action is based, or any of said rights or claims, but on the contrary, for a period of approximately fourteen years, have stood by and acquiesced in the development of said lands by defendant Murphy Oil Company and said Standard Oil Company, notwithstanding [128] their notice or knowledge of the facts in the premises as hereinbefore alleged, and notwithstanding

their notice or knowledge of the facts and matters specified in the last preceding separate defense, all of the allegations of which preceding separate defense are hereby adopted and made a part of this defense as fully as though said allegations were set forth at length herein.

Defendants further allege that throughout the term of the lease for grazing purposes covering a certain two thousand (2,000) acres of the lands involved in this action and made by defendant Edmund W. Bacon and Annie Bacon, his wife, in favor of said decedent and his said wife, as alleged in said complaint, said lessees and their transferees or successors in the ownership of said leasehold estate, claimed and enjoyed the full benefit of said lease and paid the rentals which accrued thereunder, notwithstanding notice or knowledge then possessed by said decedent and his said wife as hereinbefore alleged, and thereby, as these defendants are informed and believe, and upon such information and belief allege, said conveyance made to defendant Bacon, and the sale in pursuance and in consummation of which said conveyance was made, was ratified and confirmed by said decedent and by his heirs, devisees and personal representatives.

Defendants further allege upon and according to their information and belief, that the very great appreciation of the value of the lands conveyed to defendant Bacon as aforesaid has been developed and established by and through the courage, skill and enterprise employed, financial risks as-

sumed, and efforts made, in the development of said lands by defendant Murphy Oil Company and said Standard Oil Company as hereinbefore set forth, and that neither plaintiff nor said decedent ever contributed to or participated in, in any way, the developing or establishing of [129] said increased value of said lands.

Defendants allege upon and according to their information and belief, that on or about the year 1913 a large number of shares of the capital stock of defendant Murphy Oil Company were sold by the then holder or holders thereof to purchasers who paid full value for the shares purchased by them, and who did not at said time, or at any time prior to the commencement of this action, have any knowledge or notice whatever that any fraud of any kind had been committed, or was by any one claimed to have been committed in connection with the transaction whereby defendant Murphy Oil Company acquired the lands conveyed to defendant Bacon as described in paragraph VIII of the above mentioned complaint, or any knowledge or notice whatever of any of the alleged rights or claims upon which said complaint is based; and further allege that the value of said shares at the time of said purchases depended chiefly upon absolute ownership by said Murphy Oil Company of the interest and title in and to said last mentioned lands then and now claimed by said defendant, also to the rights and interests created or reserved in its favor in and by said conveyance and lease made by and be-

tween said defendant and said Standard Oil Company, and that each of said purchasers in making the purchase so made by him in good faith, relied upon the apparent absolute ownership by said Murphy Oil Company of said interests, rights and titles.

Defendants further allege upon and according to their information and belief that by reason of facts herein alleged it would be inequitable to award plaintiff the relief prayed for in the complaint, or any relief in equity, and that plaintiff's remedy, if any she has, is for damages; also that by reason of said facts, plaintiff is estopped to claim any relief prayed for [130] in the complaint or any relief in equity.

WHEREFORE, defendants pray that plaintiff take nothing by her action and that defendants may recover their costs herein incurred.

BRADNER W. LEE,
BRADNER W. LEE, JR.,
KENYON F. LEE,
PILLSBURY, MADISON & SUTRO,
O'MELVENY, MILLIKIN & TULLER,
Attorneys for defendant
Murphy Oil Company.

OSCAR LAWLER,
Attorney for defendant
Edmund W. Bacon. [131]

State of California,
County of Los Angeles.—ss.

John H. Emmert being duly sworn, deposes and says: That the Murphy Oil Company in the

within-entitled action is a corporation, and that affiant is an officer thereof to-wit: the Vice-President, and makes this verification for and on behalf of said corporation:

That affiant has read the foregoing Answer and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information or belief, and as to such matters he believes it to be true.

JOHN H. EMMERT.

Subscribed and sworn to before me this 6th day of December, 1918.

[Seal] NELLIE LEMERT,
Notary Public in and for the County of Los Angeles, State of California. [132]

[Endorsed]: Filed Dec. 7, 1918. [133]

(Title of Superior Court and Cause.)

CONSENT TO JUDGMENT.

All and each of the parties above named hereby consent and request that there be forthwith made, given and entered in said action a Final Judgment generally to the effect that said plaintiff take nothing as against said defendant, Edmund W. Bacon and that said plaintiff have and recover from said defendant, Murphy Oil Company the sum of $1,200,000, as damages resulting from the alleged wrongful acts, conduct and transactions mentioned in the complaint on file in said action, and that none

of the said parties recover costs as against any other; said judgment to conform substantially to the terms and effect of the form of judgment hereto attached and marked "Exhibit A".

Dated, April 28, 1919.

MARIA BASTANCHURY,
As administratrix with the will annexed of the estate of Domingo Bastanchury, deceased.

BENJAMIN E. PAGE,
W. E. MITCHELL,
ARTHUR C. HURT,
HUNSAKER, BRITT & EDWARDS,
Attorneys for said plaintiff. [134]

MURPHY OIL COMPANY,
By John H. Emmert,
Vice-President.
[Seal] By J. T. F. Baeyertz,
Secretary.

BRADNER W. LEE,
BRADNER W. LEE, JR.,
KENYON F. LEE,
PILLSBURY, MADISON & SUTRO,
O'MELVENY, MILLIKEN & TULLER,
Attorneys for defendant,
Murphy Oil Company.

OSCAR LAWLER,
Attorney for defendant,
Edmund W. Bacon. [135]

(Title of Superior Court and Cause.)

JUDGMENT FOR PLAINTIFF.

The above entitled cause came on regularly for trial before said Court in Department 10 thereof on the 29 day of April, 1919, trial by jury having been duly waived, upon the complaint filed by plaintiff and the joint and several answer thereto of said defendants; and said plaintiff having upon said hearing waived and abandoned all of her claims to equitable relief or any character of relief other than damages for or on account of the wrongs alleged in said complaint, and having elected to seek and claim only a judgment for damages on account of said alleged wrongs; and it appearing that notwithstanding the issues and disputes raised by said pleadings that said plaintiff, in pursuance of authority conferred upon her by an order duly given and made by the Superior Court of the State of California in and for the County of Orange in the proceeding therein pending entitled "In the Matter of the Estate of Domingo Bastanchury, deceased", and wherein said Maria Bastanchury was appointed and is now acting as such administratrix, empowering her so to do, has agreed with said defendants upon terms of compromise and settlement of all claims and causes of action which said plaintiff claims arose out of or in connection with the alleged wrongful acts, conduct and transactions [136] mentioned in said complaint and in or over which said plaintiff has any interest or

power of control, and it appearing that said agreement provides for the giving and making in the above entitled action of a final judgment in favor of said plaintiff and against said defendant, Murphy Oil Company, for the sum of $1,200,000—as the damages caused by or resulting from said alleged wrongful acts, conduct and transactions, also that said judgment should determine and adjudge that said plaintiff take nothing as against said defendant Edmund W. Bacon; and it appearing by written stipulation executed by all of said parties and on file in said action that said parties have consented to the giving and making herein forthwith of a judgment substantially following a specified form upon which form this judgment is based; now, therefore, in consideration of the premises

IT IS HEREBY ORDERED that said plaintiff Maria Bastanchury as Administratrix as aforesaid, is entitled to have and do have and recover from said defendant Murphy Oil Company, a corporation, the sum of $1,200,000—as damages caused by or resulting from said alleged wrongful acts, conduct and transactions but that said plaintiff do not have or recover any sum or any relief from defendant Edmund W. Bacon, also adjudged that none of said parties is entitled to costs against any other.

Dated: April 29th, 1919.

GRANT JACKSON, Judge.

[Endorsed]: Filed Apr. 29, 1919. [137]

(Title of Superior Court and Cause.)

SATISFACTION OF JUDGMENT.

The plaintiff in the above entitled action hereby acknowledges to have received the sum of One Million Two Hundred Thousand Dollars ($1,200,000.) in full and entire satisfaction of the judgment made and entered therein on the.....day of April, 1919.

Dated: April 29, 1919.

MARIA BASTANCHURY,
As Administratrix with the will annexed of the Estate of Domingo Bastanchury, deceased.

BENJAMIN E. PAGE,
W. E. MITCHELL,
ARTHUR C. HURT,
HUNSAKER, BRITT & EDWARDS,
Attorneys for Plaintiff. [138]

State of California,
County of Los Angeles.—ss.

On this 29th day of April, A. D. 1919, before me, Nina Cleaver, a Notary Public in and for the said county and state, residing therein, duly commissioned and sworn, personally appeared Maria Bastanchury, as Administratrix with the will annexed of the Estate of Domingo Bastanchury, deceased, known to me to be the person whose name is subscribed to the within instrument, and

acknowledged to me that she executed the same, as such administratrix.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] NINA CLEAVER,
Notary Public in and for said county and state.

[Endorsed]: Filed Apr. 30, 1919. [139]

(Title of Superior Court and Cause.)

ORDER AUTHORIZING SETTLEMENT AND COMPROMISE.

Upon reading and filing the verified petition of Maria Bastanchury, administratrix with the will annexed of the last will and testament of Domingo Bastanchury, deceased, from which it appears that there is pending in the Superior Court of the County of Los Angeles a certain action wherein said administratrix is plaintiff and Murphy Oil Company, a corporation, and Edmund W. Bacon are defendants, and that, subject to the approval and authorization of this court, said administratrix and the defendants in said action have entered into an agreement of compromise and settlement thereof, upon the terms and conditions set forth in said petition; and evidence having been produced before the court in support of the allegations of said petition, the court now finds that all said

allegations are true; and it further appearing that said agreement of compromise and settlement is just and for the best interests of the estate of said deceased, and that all persons interested in said estate, either as heirs, devisees or legatees, have consented to, and approved of, said agreement of settlement, and have joined in said petition praying for an order authorizing and approving the same;

IT IS THEREFORE, ORDERED that said agreement of settlement and compromise, as set forth in said petition, be, and the same is hereby, in all respects approved; and that said administratrix be, and she is hereby, authorized and empowered to enter [141] into and carry out said agreement of compromise and settlement, and as such administratrix to execute and deliver to Murphy Oil Company, one of the defendants in said action, a release of the nature set forth in said petition for execution by her as such administratrix, and also any and all other instruments in writing which may be deemed necessary or proper to carry into effect and consummate said agreement of compromise and settlement.

Done in open court this 28th day of April, 1919.

Z. B. WEST,
Judge of said Court.

[Endorsed]: Filed Apr. 28, 1919. [142]

Recorded in Book M & O No. 34, page 18, Apr. 29, 1919.

[Endorsed]: Filed Apr. 28, 1919. [143]

(Title of Superior Court and Cause.)

PETITION OF ADMINISTRATRIX FOR AN ORDER AUTHORIZING HER TO COMPROMISE CLAIM AND SETTLE LITIGATION.

TO THE ABOVE NAMED COURT:

Your petitioner, Maria Bastanchury, as administratrix with the will annexed of the estate of said Domingo Bastanchury, respectfully shows:

1. Said Domingo Bastanchury died on or about July 21, 1909, in the County of Orange, State of California, he, said decedent, being at the time of his death a resident of said county and leaving estate therein. Said Domingo Bastanchury left a last will and testament dated October 30, 1893, wherein one Orel M. Goldaracena was named as executor, who, thereafter, to-wit, May 22, 1918, in writing renounced his right to act as executor of said will. June 18, 1918, your petitioner filed her petition with the clerk of this court for the admission of said will to probate, and the issuance to her of letters of administration with the will annexed of the estate of said decedent. Such proceedings were thereafter had in the matter of said estate that July 5, 1918, this court, by its order duly given and made, admitted said will to probate as the last will and testament of said decedent, and directed letters of administration with the will annexed to issue to petitioner upon her taking the oath required by law and giving bond as required by said order. Thereafter, and on the same day,

petitioner duly qualified by taking such oath and giving such bond, and thereupon the clerk of said court, under the seal thereof, on the 5th day of July, 1918, issued such letters of administration to your petitioner, which letters have not been revoked, and she ever since has been, and now is, the duly appointed, qualified and acting administratrix with the will annexed of the estate of said deceased. [144]

2. Thereafter, to-wit, August 28, 1918, your petitioner as administratrix with the will annexed of the estate of said Domingo Bastanchury, deceased, commenced an action in the Superior Court of the County of Los Angeles, State of California, which action is entitled "Maria Bastanchury, administratrix with the will annexed of the estate of Domingo Bastanchury, deceased, plaintiff, v. Murphy Oil Company, a corporation, and Edmund W. Bacon, defendants", which action is numbered and designated on the files of said court "B-66477". Reference is hereby made to the complaint in said action for further particulars as to the facts on which plaintiff's right to relief therein was based, and the nature and character of the relief prayed for therein, a copy of which complaint is hereunto annexed, marked "Exhibit A" and made a part hereof. Thereafter the defendants in said action filed their answer denying the allegations of the complaint. Said action is still pending and undisposed of.

3. Your petitioner is the widow of said Domingo Bastanchury, and Dominic J. Bastanchury, Gaston A. Bastanchury, Joseph F. Bastanchury and John B. Bastanchury are the only children of said Domingo Bastanchury, and, with your petitioner, are the only persons entitled to share in the estate of said Bastanchury, either as his heirs at law or under or by virtue of his last will.

4. After the filing of the answer in said action, as aforesaid, negotiations were entered into between your petitioner and the defendants in said action for the settlement and compromise thereof without further litigation, and April 25, 1919, an agreement of settlement and compromise was entered into between your petitioner and the defendants in the said action, subject to the approval of this court, the terms and conditions of which agreement are as follows, to-wit:

(1) Murphy Oil Company, a corporation, on or before April 29, 1919, shall pay to your petitioner the sum of six hundred thousand dollars ($600,000.00) in cash, and execute and deliver [145] to your petitioner, as administratrix, as aforesaid, its six (6) promissory notes in the sum of one hundred thousand dollars ($100,000.00) each, each bearing date of April 29, 1919, and payable at Los Angeles, California, respectively, on or before thirty (30) days, sixty (60) days, ninety (90) days, one hundred and twenty (120) days, one hundred and fifty (150) days and one hundred and eighty (180) days

after the date thereof, without interest prior to their maturity.

(2) In consideration of the payment of said sum of $600,000.00, and the execution and delivery of said notes, (a) petitioner shall secure an order of this court, upon this petition and the consent of your petitioner and all other parties interested in the estate of Domingo Bastanchury, whether as heirs at law, legatees or devisees, approving this agreement of compromise and settlement; (b) your petitioner, as administratrix of the estate of said Domingo Bastanchury, deceased, shall execute and deliver to the attorneys for the defendants in said action a release, acquittance and discharge of each of the defendants therein, and all other persons and corporations who have heretofore owned or claimed, or now own or claim, any interest through or under said Murphy Oil Company in or to any of the lands conveyed by said deed of December 15, 1904, from and of all claims or causes of action for damages, or otherwise, on account of the alleged frauds referred to in said complaint also all other like claims or causes of action on behalf of said estate which have arisen or accrued by reason of the alleged acts, conduct and transactions of any of the defendants mentioned in said complaint; (c) your petitioner, Maria O. Bastanchury, and said Dominic J. Bastanchury, Gaston A. Bastanchury, Joseph F. Bastanchury and John B. Bastanchury shall cause to be executed and delivered to the at-

torneys for the defendants in said action, [146] a release, acquittance and discharge of each of the defendants in said action, and also all other persons and corporations who have heretofore owned or claimed, or now own or claim, any interest, through or under said Murphy Oil Company, in or to any of the lands conveyed by said deed dated December 15, 1904, from and of all claims or causes of action for damages, or otherwise, on account of the alleged frauds referred to in said complaint, and also all other like claims or causes of action belonging to them or any of them, or in which they or any of them are interested, or which said estate, or the administratrix thereof, or any of them, claim, or might claim, to have arisen or accrued by reason of the alleged acts, conduct and transactions or any of them, mentioned in said complaint; which release shall contain an agreement of indemnity, and shall be in such form as shall be approved by the attorneys for the parties plaintiff and defendant in said action; (d) petitioner shall cause the said action pending in the Superior Court of the County of Los Angeles, to be dismissed, without costs to any of the parties thereto; or, if the defendants in said action shall so elect, petitioner shall join with the defendants therein in causing a judgment to be entered in said action in favor of the plaintiff for the sum of one million two hundred thousand dollars ($1,200,000.00), as dam-

ages on account of the frauds alleged in said complaint, but without costs, and, if said defendants shall elect to have such judgment entered, them, upon receipt of said sum of six hundred thousand dollars ($600,000.00) in cash, and said promissory notes, aggregating the further sum of six hundred thousand dollars ($600,000.00), plaintiff in said action shall forthwith cause satisfaction of said judgment to be entered of record.

5. Your petitioner further shows that it would require several years, and involve the estate herein in large expense, to prosecute said action so pending in the Superior Court of the County of Los Angeles to a final determination thereof; and, while your petitioner is advised and believes that she, as [147] plaintiff in said action, has a meritorious cause of action and should succeed therein, she, and all other parties interested in said estate, are desirous of settling and compromising said action upon the terms hereinabove set forth, and she alleges that said agreement of compromise and settlement is just, reasonable, and for the best interests of the estate and all persons interested therein.

WHEREFORE petitioner prays that an order may be made by this court authorizing and approving said compromise and settlement and authorizing your petitioner, as administratrix with the will annexed of said Domingo Bastanchury, upon receiving the consideration in this petition mentioned,

to execute and deliver such agreements, contracts and other instruments, as may be necessary to carry said agreement of settlement and compromise into effect, or, for such other order as may be proper in the premises.

MARIA BASTANCHURY
Administratrix with the will annexed of
Domingo Bastanchury, deceased,
Petitioner.

BENJAMIN E. PAGE & ARTHUR C. HURT,
Attorneys for Petitioner.

CONSENT TO THE GRANTING OF THE FOREGOING PETITION.

The undersigned, Maria O. Bastanchury, widow of Domingo Bastanchury, and Dominic J. Bastanchury, Gaston A. Bastanchury, Joseph F. Bastanchury and John B. Bastanchury, sons of Domingo Bastanchury, hereby join in the prayer of the foregoing petition, and do consent to, and request the court to make, an order as therein prayed for.

Dated April 25, 1919.

MARIA O. BASTANCHURY,
DOMINIC J. BASTANCHURY, [148]
GASTON A. BASTANCHURY,
[Seal] JOSEPH F. BASTANCHURY,
JOHN B. BASTANCHURY.

State of California,
County of Orange.—ss.

On this 26th day of April in the year one thousand nine hundred and 19 A. D. before me Ruby Esmay, a Notary Public in and for said County, residing therein, duly commissioned and sworn, personally appeared Maria O. Bastanchury, Dominic J. Bastanchury, Gaston A. Bastanchury, Joseph F. Bastanchury, John B. Bastanchury, personally known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Notarial Seal] RUBY ESMAY,
Notary Public in and for the County of Orange, State of California.

State of California,
County of Orange.—ss.

Maria A. Bastanchury, being first duly sworn, says: That she is the person named as petitioner in the foregoing petition; that she has read said petition, and knows the contents thereof, and that it is true of her own knowledge, except as to the matters therein stated upon information or belief, and as to those matters she believes it to be true.

MARIA BASTANCHURY.

Subscribed and sworn to before me this 26th day of April, 1919.

[Notarial Seal] RUBY ESMAY,
Notary Public in and for the County of Orange, State of California. [149]

(Title of Superior Court and Cause.)

WHEREAS, in and by the complaint on file in the above entitled action said plaintiff states and asserts against said defendants various alleged causes of action and alleged rights or claims to relief, all based upon certain fraudulent act or conduct alleged to have been heretofore committed by or on behalf of said defendants; and

WHEREAS, each of said defendants has denied and disputed at all times heretofore and does now deny and dispute each and every of said charges, also the existence at this time or at any time of any liability or duty of any kind whatsoever, either legal or equitable in favor of said plaintiff or of any other person whatsoever claiming under or through said decedent which has heretofore arisen out of or could hereafter arise out of or directly or indirectly in connection with the acts, conduct and transactions mentioned in said complaint, or any of them, in so far as said acts, conduct and transactions ever had any existence in reality or in fact; and

WHEREAS, nevertheless, said plaintiff, acting with and upon the consent and approval of each of the undersigned, has agreed with said Murphy Oil Company upon a compromise and settlement of all [150] of said disputed rights, claims, causes of action and liabilities, including especially and primarily all claims or causes of action for damages on account of said alleged fraudulent acts and transactions which are stated or asserted in said complaint or might be therein or otherwise claimed or asserted by said Administratrix against said defendants, or either of them; and

WHEREAS, said Murphy Oil Company has heretofore paid to said Administratrix, partly in cash and partly by the execution and delivery of its promissory notes the sum which said Administratrix undertook by said agreement to accept in compromise and settlement of all of said rights, claims and causes of action.

NOW, the undersigned, Maria Bastanchury, Dominic J. Bastanchury, Gaston A. Bastanchury, Joseph F. Bastanchury, and John B. Bastanchury, being all of the heirs at law, as well as all of the legatees of said decedent, in consideration of the payment so made by said Murphy Oil Company to said Administratrix, do hereby jointly and severally release, acquit, and discharge each of the defendants above mentioned, also all other persons and corporations who have heretofore owned or claimed or now own or claim any interest through

or under said Murphy Oil Company in or to any of the lands conveyed by that certain deed dated December 15, 1904, a copy of which is set forth in paragraph VIII of said complaint, from and against all claims or causes of action for damages on account of said alleged fraud, involved or referred to in said complaint, also all other like claims or causes of action belonging to the undersigned or any of them or in which they or any of them are in any manner interested which said Administratrix and the undersigned or any of them claim or might claim to have arisen or accrued by reason of the alleged acts, conduct and transactions or any of them mentioned in said complaint. [151]

And in consideration of said compromise and settlement of said alleged claims for damages, the undersigned do hereby jointly and severally release, acquit and discharge each of the releasees above named or described from and against all other claims or causes of action involved or referred to in said complaint, also all other rights, claims, or causes of action of whatsoever nature which said Administratrix and the undersigned, or any of them, claim or might claim as against said releasees or any of them or in which said Administratrix and the undersigned or any of them claim or might claim to be interested, which arose or accrued or which might be claimed to have arisen or accrued by reason of said alleged acts, conduct and transactions or any of them.

Mr. Ben R. Meyer, having acted as intermediary between the respective parties in the

course of the negotiations leading up to said compromise and settlement, the undersigned and each of them hereby declare and acknowledge that throughout said negotiations it has been understood by the undersigned that said Meyer expected to be compensated for his services as such intermediary in part by said Murphy Oil Company and in part by said Administratrix and the undersigned.

The undersigned, jointly and severally, hereby agree to indemnify and protect the releasees above mentioned and each of them from and against all rights, claims and causes of action hereinbefore mentioned, in respect of all liabilities involved therein or based thereon and now or hereafter existing or claimed to exist in favor or for the benefit of any persons or person, corporations or corporation, claiming or who shall claim through or under Domingo Bastanchury, deceased, as creditor or otherwise, or through or under any of the [152] undersigned, also from and against all loss, costs and attorneys' fees hereafter suffered or borne by said releasees or any of them on account of or in respect of said liabilities or any of them.

WITNESS our hands this 26th day of April, 1919.

MARIA BASTANCHURY,
DOMINIC J. BASTANCHURY,
GASTON A. BASTANCHURY,
JOSEPH F. BASTANCHURY,
JOHN B. BASTANCHURY. [153]

(Title of Superior Court and Cause.)

RECEIPT AND AGREEMENT TO SATISFY JUDGMENT.

Plaintiff in the above entitled action hereby acknowledges receipt of the sum of One Million Two Hundred Thousand Dollars ($1,200,000.) in full and entire satisfaction of the judgment made and entered in the above entitled cause on the .....day of April, 1919, and hereby agrees and undertakes to cause to be entered in said action full and entire satisfaction of said judgment whensoever thereunto requested by the defendants in said action.

MARIA BASTANCHURY,
As Administratrix with the will annexed of the Estate of Domingo Bastanchury, deceased.

[Seal] BENJAMIN E. PAGE,
W. E. MITCHELL,
ARTHUR C. HURT,
HUNSAKER, BRITT & EDWARDS,
Attorneys for Plaintiff. [156]

State of California,
County of Los Angeles.—ss.

On this 29th day of April A. D., 1919, before me, Nina Cleaver, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared Maria Bastanchury, as Administratrix with the Will annexed of the Estate of Domingo Bastanchury, de-

ceased, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same as such Administratrix.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

[Seal] NINA CLEAVER,
Notary Public in and for said County and State. [157]

EXHIBIT "C."

Sheet No..... Account No. 109-a
New Ledger a/c 153

S. & E. LEGAL-BASTANCHURY A/C

Date 1918	Items Debits	Credits	From	Debits	D C	Credits	A C	Balance
	Amounts Brought Forward							
Oct. 25	Transf from S & E Legal		J808	399.28				
	PI4940—B. W. Lee	19.60						
	" 5076 "	9.30						
	" 5261½ 10 Copies Oil World	1.00						
	" 5283 B. W. Lee	306.61						
	C743 Conf with JHE a/c trip to Warren, Pa., to interview Johnson 5/6-5/11	62.77						
		399.28						
	" Portion of PI5300 work on lawsuit maps		J808	93.00				
22	Ck 19521 J H Emmert		C748	500.00				
25	" 19252 W S Lane—Chauffr for JHE		" "	20.00				
31	Trips to LA. to see Mr Lee L L Bauers time etc		J814	15.65				
	" Engineers services in connection with maps		PI5339	225.00				
	" B. W. Lee services		" 5341	1,250.00				
	" Tax Bonds 5 maps (Nat'l Surety Co.)		" 5349	40.00				
	" Transf from Special Exp.		J815a	164.98				2,707.91

	PI5234—Chauffer services for WCM & JHE 124.98					
	PI5236 Work on record maps 15.00					
	C738 Recording maps 25.00					
		164.98				
Nov.	29 Ck 19940—Oscar Lawler		C761	2,500.00		
	7 " 19659—W. S. Lane—Exp a/c for J H Emmert		"752	8.10		
	11 " 19711 B. W. Lee Fee		"754	5,000.00		
	" " 19712 Oscar Sutro Fee		" "	5,000.00		
	" " 19713 E. E. Millikin Fee		" "	5,000.00		
	" " 19714 Oscar Lawler Fee		" "	5,000.00		
	30 B. W. Lee transferred to a/c Payable		"817		5,000.00	
	" Map work—J. M. Kemerer		PI5401	403.50		
	" B. W. Lee—Atty's fees		" 5405	5,531.01		
	" Atty's expense		" 5417	501.25		26,651.77
Dec.	4 Ck 20044 to J. H. Emmert		C765	500.00		
	Amounts Carried Forward			32,151.77	5,000.00	

M1 [159]

EXHIBIT "C."

Account No. 109a Sheet No.....

S. & E. LEGAL-BASTANCHURY A/C

Date 1918	Items Debits	Credits	From	D C Debits	Credits	A C Balance
	Amounts Brought Forward			32,151.77	5,000.00	M1
Dec.	4 Ck 20046 Oscar Lawler		C765	1,500.00		
	19 " 20211 " "		" 770	1,000.00		
	3 Trip to LA to see Mr. Lee		JC172	1.40		
	31 Map work		PI5468	39.00		
	" Oscar Lawler Services		" 5473	2,000.00		
	" Mr. Lee a/c Millikin bill		" 5477	1,134.17		
	" Time & Serv. re interviews with Johnson on 10/28 & 10/30 & 11/4		" 5479	75.00		32,901.34
	" Roy Oil Exp.		J832		32,901.34	
				37,901.34	37,901.34	

M2 [160]

Sheet No..... Account No. 153

EXHIBIT "D."

LEGAL-BASTANCHURY A/C

Old Ledger a/c 109-a

Date 1919	Items Debits	Credits	From	Debits	D C	Credits	A C	Balance
Jan. 8	Lunch & Garage bill on 3 LA trips		JC173	4.10		√		
31	Engineer Services coloring maps etc.		PJ5534	14.00		√		
"	Bradner W. Lee & Louis Baar services		" 5537	5200.50		√		
"	Oscar Lawler—Atty fees		" 5538	8000.00		√		
"	E. E. Millikin " "		" 5542	5000.00		√		18218.60
				18218.60	*			
Feb. 7	T G Sutherland Expenses		JC174	5.28		√		
17	" " Hotel and meals		" 175	5.00		√		
28	Oscar Lawler—Atty fees		PJ5593	3500.00		√		21728.88
				21728.88	*			
Mar 28	Expense—A. Schinneller & T. G. Sutherland		JC176	2.60		√		
31	Oscar Lawler—Atty' fees		PJ5662	5000.00		√		
				26731.43	*			
Apr 30	Bradner W. Leo services		" 5736	44.50		√		
"	Oscar Lawler "		" 5738	5596.36		√		
"	Pillsbury, Madison & Sutro services		" 5754	549.60		√		9690.46
"	Oscar Sutro—Atty' fee		" 5767	3500.00		√		36421.94
				36421.94	*			
May 5	Poste, Postage, Clock rental See a/c 154		JC177	XXX				
"	Lunch & parking garage & 5 copies Wh. News		" "	2.25		√		
1	Documentary Stamps MFT note		C821	120.00		√		
2	T G Sutherland services		" "	1000.00		√		
"	A Schinneller "		" "	1000.00		√		
"	Lew Bauer "		" "	1000.00		√		
10	Ray Frich "		" 822	1000.00		√		
21	Jas. L. Johnson "		" 828	500.00		√		
31	B W. Lee Atty fees.		PJ5805	15000.00		√		
"	" " (W. R. Poundstone)		" "	500.00		√		
"	Oscar Lawler Atty fees		" 5806	15000.00		√		
"	" " " expenses		" "	2041.17		√		
"	E. E. Millikin "		" 5812	304.00		√		
"	Ben R. Meyers Services		" 5814	35000.00		√		
"	O'Melveny, Millikin & Fuller—fees		" 5816	15000.00		√		
"	" " " " expense		" "	336.76		√		88158.82
"	Pillsbury, Madison & Sutro "		" 5819	354.64		√		124580.76
June 30	Misc charges B. W. Lee		" 5896	16.62		√		
	Amounts Carried Forward			124597.38				N1

[161]

*Pencil extensions or additions.

EXHIBIT "D."

Account No. 153 Sheet No.....

LEGAL-BASTANCHURY A/C

Date 1919	Items Debits	Credits	From	Debits	D C	Credits	A C	Balance
	Amounts Brought Forward			124597.38				582.17
June 30	Pillsbury, Madison & Sutro exp a/c services		PJ5885	565.55		√		125162.93
				125162.93 *				
July 31	Oscar Lawler		" 5941	300.00		√		125462.93
				125462.93 *				
Aug 31	Pillsbury, Madison & Sutro fees		" 6022	45000.00		√		170462.93
Sept 30	Miller, Smith, Caufield, Paddock & Perry		" 6084	347.46		√		170810.39
				170810.39 *				
Oct 31	O'Melveny, Millikin & Fuller		" 6159	66.85		√		170877.24
Dec 31	Rev & Exp Ray Oil		J913			170877.24		
				170877.24		170877.24		
	Amounts Carried Forward							N2

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Sheet No..... Account No. 196

BASTANCHURY ACTION (E)

Date 1919	Items Debits	Credits	From	Debits	D C	Credits	A C	Balance
	Amounts Brought Forward							
Apr 26	Note to Murphy Family Trusts		J868	600000.00				
" "	" " Maria Bastanchury Admx		"869	600000.00				120000000
Dec 31	Rev & Exp Roy Oil		"913			1200000.00		
				1200000.00		1200000.00		
								O1

[163]

*Pencil extensions or additions.

INDENTURE
of Conveyance, Transfer and Sale
and of Lease

MURPHY OIL COMPANY
and
STANDARD OIL COMPANY

Dated December 1, 1913. [164]

State of Michigan,
County of Wayne.—ss.

I, Walter P. Clark, a Notary Public in and for the said County of Wayne and State of Michigan, do hereby certify that I have compared the attached copy of Indenture of Conveyance, Transfer and Sale and of lease, dated December 1, 1913, made between Murphy Oil Company and Standard Oil Company, which said original is in the office of John H. Emmert, Vice-President of said Murphy Oil Company, 2204 Penobscot Building, Detroit, Michigan, and I do certify that the said attached copy is a true, exact, complete and perfect copy of said original.

In witness whereof, I have hereunto set my hand and seal this 26th day of September, A. D. 1928.

[Seal] WALTER P. CLARK,
Notary Public, Wayne County, Michigan.

My commission expires April 3, 1929.

State of Michigan,
County of Wayne.—ss.

John H. Emmert, being duly sworn, deposes and says that he is an officer, to-wit, Vice-President of the Murphy Oil Company and that as such he has custody of the original Indenture of Conveyance, Transfer and Sale and of Lease, dated December 1, 1913, between Murphy Oil Company and Standard Oil Company, and that he has compared the attached copy of said Indenture with the original thereof and that the said attached copy is a true, exact, complete and perfect copy of said original.

And further, deponent saith not.

JOHN H. EMMERT.

Subscribed and sworn to before me this 26th day of September, 1928.

[Seal] WALTER P. CLARK,
Notary Public, Wayne County, Michigan.
My commission expires April 3, 1929. [165]

THIS INDENTURE, of conveyance, transfer and sale and of lease, made at San Francisco, California, this first day of December, 1913, by and between MURPHY OIL COMPANY, a corporation organized and existing under the laws of the State of California, the party of the first part, the grantor, vendor and lessor, herein called the first party, and STANDARD [Parties.*] OIL COMPANY, a similar corporation organized and existing under the laws of the State of California, the party of the

*Words set in brackets indicate marginal notes appearing in the Indenture.

second part, the grantee, purchaser and lessee, herein called the second party,

WITNESSETH:

Payments.

The second party, in consideration of the conveyance [Payments.] and sale and of the lease all as hereinafter set forth and independently of and in addition to the royalties and other considerations in this instrument herein and hereinafter provided has paid to the first party the sum of ten dollars ($10.00) and other sums and other considerations, the receipt of which by the first party is hereby acknowledged, and agrees to further pay independently of the said royalties and said other considerations to the first party the sum of one million dollars ($1,000,000.00) on or before four (4) months from the date hereof with interest at the rate of five per cent per annum from date until paid; also the further sum of two hundred and fifty thou- [166] sand dollars ($250,000.00) on or before fifteen (15) months from the date hereof; also the further sum of two hundred and fifty thousand dollars ($250,-000.00) on or before eighteen (18) months from the date hereof; also the further sum of two hundred and fifty thousand dollars ($250,000.00) on or before twenty-one (21) months from the date hereof; also the further sum of two hundred and fifty thousand dollars ($250,000.00) on or before twenty-four (24) months from the date hereof; also the further sum of five hundred thousand dollars ($500,000.00)

on or before thirty (30) months from the date hereof; also the further sum of five hundred thousand dollars ($500,000.00) on or before thirty-six (36) months from the date hereof; also the further sum of five hundred thousand dollars ($500,000.00) on or before forty-eight (48) months from the date hereof; and also the further sum of five hundred thousand dollars ($500,000.00) on or before sixty (60) months from the date hereof. The first party shall not be entitled to interest on any of the payments to be made as hereinabove set forth (except on the first of said payments) prior to the date on which said payments are due as hereinabove set forth and the second party covenants that it will without delay and well and truly make all of the said payments at the time herein provided. All of said payments shall be paid to the first party at its principal place of business in East Whittier, California, or at such place or bank in California as previously designated by writing addressed to the second party from time to time by the first party, or [167] failing such designation the second party shall make such payments to the credit of first party at a bank of good standing in California, and promptly notify the first party thereof.

It is further stipulated and agreed that all of said payments and also all other cash payments for royalties herein provided to be paid under this instrument, and all other rents which are herein provided to be paid in cash shall be paid in standard gold coin of the United States of America and that

by the word "dollar" wherever used in this instrument is meant that each dollar shall be of the standard weight and fineness observed at the Mint of the United States and fixed by its laws at the time said payment is due.

And it is further expressly understood and agreed by and between the first party and second party that no acceptance by the first party of any currency, legal tender, checks, coin, money or value whatever except standard gold coin of the United States of America as hereinbefore specified in payment of any installment or installments of rent shall be construed to be a waiver on the part of the first party of the right, after thirty (30) days' notice to second party, to demand the payment of any other unpaid installment or installments of rent or other cash payment herein provided in standard gold coin of the United States of America as hereinbefore specified.

CONVEYANCE, TRANSFER AND BILL OF SALE.

The first party, for and in part consideration of the payments made and by the second party to be made as [168] [Bill of Sale of all Property; Exceptions.] hereinbefore set forth, and of the other considerations paid and delivered by the second party hereinbefore referred to, has granted, bargained, sold, conveyed, transferred, assigned, and set over, and does hereby grant, bargain, sell, convey, transfer, assign and set over unto the second

party absolutely, and for and as the sole property of the second party, and free and clear of all encumbrances, and with full warranty of the title of the first party thereto, all the property of every nature whatsoever (inclusive of all fixtures and appurtenances and exclusive only of the land itself and such buildings and personal property as may be expressly reserved unto and by the first party according to an inventory to be signed by the parties hereto), in or on, about or between the four parcels herein described or any of them, or thereunto belonging or in any manner appertaining, which has heretofore been employed or used or installed for use or owned by the first party in connection with or between any of the four parcels of land herein described or in the drilling or operation of the premises herein described or in the development, production, marketing or transportation of oil; including all oil wells and their appurtenances, buildings and other structures, camps, camp houses and their furnishings and fittings, machinery, pumps, tanks, tankage, tools, supplies, horses, and personal property of every kind, tracks, switches, loading racks, and all other equipment or appliances, together with oil, gas and water pipe lines, telephone and telegraph lines (except such water lines as are reserved to the first party in the [169] inventory hereinbefore referred to), and rights appurtenant thereto, and together with water to which the first party is entitled as the holder of ten shares of water stock or as the owner of the lands herein

described, but only so much of such water as may be [Water.] required by the second party in the economical and reasonable operation of the premises hereinafter leased, as herein provided, and all rights of way for such pipe lines and telephone and telegraph lines, and [Rights of way.] other rights of way and easements, between any of the four parcels herein described, and any one or more of the other of said parcels; it being the intent hereof that the second party shall own and have all and singular said property and rights and privileges belonging to, possessed or used or installed for use by the first party in the conduct of its oil business including all property possessed or used or installed for use by the first party, in the operation of the premises herein described and in the development, production, transportation and marketing of oil therefrom or from any part thereof. Nothing in this instrument contained, however, shall be so construed as to obligate the first party to transfer or convey to the second party any part or portion of said land itself nor shall this instrument or any provision herein contained be so construed as to operate as a transfer or conveyance from the first party to the second party of any part or portion of said land itself. [170]

LEASE.

The first party for and in part consideration of the payments made and by the second party to be made as hereinbefore set forth and of the other considerations paid by the second party hereinabove

referred to and of the covenants, conditions and agreements herein contained by the second party to be duly and faithfully kept and performed, and subject to the limitations [Mineral Grant.] herein contained, has granted, bargained, sold and conveyed, and does by these presents grant, bargain, sell and convey, unto the second party all the petroleum oil, natural gas and kindred mineral substances in and under the premises hereinafter described, as parcels one and two, and has leased and let, and by these presents does lease and let unto the second party, its successors and assigns, the said [Lease.] premises for a term of forty (40) years from the date hereof, with the exclusive right to the possession of the premises (except as herein otherwise expressly [Term.] provided with reference to the first party), and with the exclusive right and privilege of prospecting for, drilling for, developing, producing and removing petroleum oil, natural gas and kindred mineral substances in and from said premises during said term.

Said parcels one and two are situate in the Counties of Orange and Los Angeles, in the State of California, and are more particularly described as follows, to wit:

PARCEL ONE:

[Parcel One East Whittier lands.]

Being all of blocks three (3), six (6), seven (7), ten (10) and twelve (12) of Tract No. 159 in the [171] County of Los Angeles, State of California, as recorded in Map Book 14, pages 14 and 15, and Map

Book 17 pages 190 and 191 of Records of said county; and those portions of blocks four (4), five (5) and (9) of said Tract 159, lying northeasterly of a line formed by projecting the center line of blocks eleven (11) and twelve (12) of the Subdivision of the East Whittier Rancho, as shown upon a map recorded in Book 43 pages 15 and 16 Miscellaneous Records of Los Angeles County, in a southeasterly direction to a point of intersection with the common boundary of blocks five (5) and seven (7) of said Tract 159. The area of the fractional blocks four (4), five (5) and nine (9) above described being respectively five hundred seventy-three and thirty-five hundredths (573.35) acres, more or less; forty-five and twenty-hundredths (45.20) acres, more or less; and five and six hundredths (5.06) acres, more or less.

Also, that portion of block four (4) of said Tract 159 described as follows:

Beginning at a 6″x6″ Redwood Post in the northerly line of Sixth street, distanct south fifty-six degrees (56°) nineteen minutes (19′) east one hundred ninety (190) feet from the southerly corner of Block nine (9) Tract 159 as recorded in Map Book 17 pages 190-191 Records of Los Angeles County; thence north thirty-three degrees (33°) forty-one minutes (41′) east six hundred thirty (630) feet to a 6″x6″ Redwood Post; thence south fifty-six degrees (56°) nineteen minutes (19′) east one thousand sixty-six (1066) feet; thence south sixty degrees (60°) fifty-four minutes [172] (54′)

west four hundred fifty-three seven-tenths (453.7) feet; thence south eighty-seven degrees (87°) fifty-four minutes (54′) west three hundred eighty-seven and two-tenths (387.2) feet, more or less, to a point in the northerly line of Sixth street extended; thence north fifty-six degrees (56°) nineteen minutes (19′) west five hundred forty-five (545) feet more or less, to the point of beginning, containing twelve and fifty-seven hundredths (12.57) acres, more or less.

PARCEL TWO:

[Parcel Two Rancho Los Coyotes Lands.]

In Los Angeles County, State of California, described as follows, to wit:

(a). The north half and the southwest quarter of section thirteen (13), township three (3) south, range eleven (11) west, S. B. B. & M., in the Rancho Los Coyotes.

(b). In Orange County, State of California, described as follows, to wit:

All of section seventeen (17), eighteen (18), nineteen (19) and twenty (20) (except the north quarter of section seventeen (17) and the southwest quarter of section nineteen (19)), township three (3) south, range ten (10) west, S. B. B. & M., in the Ranchos Los Coyotes.

[Other rights Granted.]

Together with the right exclusive of all others (except as herein otherwise expressly provided with reference to the first party) of entering upon said premises at all times with the right of ingress, egress

and regress to and from the same for the purpose of pros- [173] pecting for, drilling for, developing, producing, storing and removing such petroleum oil, natural gas and kindred mineral substances on, in and from said premises, with the right to construct, maintain and use thereon all buildings, tanks, machinery, plant, equipment and apparatus, pipe lines for the transportation of oil, gas and water, telephone and telegraph lines, and with all rights of way therefor, tankage and other structures and facilities, for the prospecting of, drilling on, developing from, producing from, transportation from and storage on said premises of petroleum oil, natural gas and kindred mineral substances whether produced or obtained on or from said premises or elsewhere; provided, however, that such substances produced or obtained elsewhere may be stored on said leased premises at such locations as may be [Water.] selected by and with and upon the consent of first party in writing first had and obtained; and for the distribution of water for use only upon said premises; the first party reserving to itself the one-fourth (¼) part of all the petroleum oil produced and saved by the second party on said premises in excess of seven hundred and thirty thousand (730,000) barrels in any [Royalty reserved.] one year during the first five (5) years from the date hereof, and the one-fourth (¼) part of all the petroleum oil produced and saved by the second party on and from said premises after five (5) years from the date hereof, and the one-fourth (¼) part of

all kindred mineral substances (except gas) extracted and marketed from said premises by the second party. [174]

[Existing leases.]

The rights and privileges herein granted are taken by the second party subject to all existing rights of way, licenses and easements over, across and upon said premises and subject to all existing leases of surface rights in and to portions of the premises, all of which leases will expire on or before the 1st day of January, 1915.

[Second party to have free use of oil, gas and water.]

The second party may, while this instrument remains in force, or while it is occupying any part of the premises pursuant hereto, develop water on the premises and shall have the free use during said time of such oil, gas, and water as it may develop or find upon said premises, together with the right to take the same at such times and in such manner as it may deem fit, but only for its necessary and economical operations under the terms of this instrument, and with as little waste as may be consistent with economic and reasonable use, on, to, from or between said parcels One, Two, Three and Four herein described, or either or any of them, in prospecting for, drilling for, developing, producing, storing or transporting petroleum oil, gas or kindred mineral substances, and for domestic use on any of the parcels herein described.

[Reservations by first party.]

The first party expressly reserves to itself, its agents, servants, employees or other representative or representatives, the right and privilege of entering upon said real property and the whole thereof at any and all times for the purpose of inspecting the same and inspecting the operations of the second party thereon, and (subject always and subordinate to the right of [175] the second party to operate and use the premises as hereinafter provided) also reserves the right and privi- [Inspection of premises.] lege at all times freely and uninterruptedly to use in such manner as to it may seem fit, the surface of the premises herein leased, and to farm, pasture, cultivate and remove the crops and other farm products and [Surface rights.] all trees growing upon, from and off the surface of said leased premises. All water not taken or used by [Water reserved to first party.] the second party, as and for the purposes herein permitted, is hereby expressly reserved by the first party to itself, together with the right to take and use the same in such manner and at such times as the first party may see fit and for its own use and benefit, together with the right to construct, maintain and keep in repair, but always at first party's own expense, all pipes, [Pipe lines; Reservoirs.] pipe lines, reservoirs or other closed conduits for the conservation and transportation of such water as to the first party may seem necessary or convenient [Reservations subordinate to second party's rights.] All

use by the first party of the surface of said land including the right of the first party herein reserved to farm, pasture, cultivate and remove the crops and other farm products and trees, and to conserve and transport water and construct and maintain pipes, pipe lines, reservoirs and other closed conduits, shall at all times be with as little interference with the operation of the second party hereunder as possible and shall be subject and subordinate to the rights of the second party herein granted to drill, develop, extract, store, transport and remove petroleum oil, gas or kindred mineral substances from the premises, or to develop and use water, and shall not inter- [176] fere with such rights whenever the second party shall desire to exercise the same.

[Second party held harmless from claims for damage from first party's use of surface rights or handling of royalty oil or to first party's agents or property.]

The first party covenants and agrees to hold the second party harmless from any and all claims and demands of any nature whatsoever which may be made against the second party for damages or injuries suffered, or claimed to have been suffered, whether the same be personal injuries or injuries or damage to property arising out of, or connected with the farming operations of the first party or other use by the first party of the surface rights of the premises herein leased to the second party, or of any part thereof or the use of any of the

other rights herein reserved to the first party or arising out of, or connected with, the taking, storing, use, or transportation by the first party of water, or petroleum oil or gas or kindred mineral substances, and will likewise save and hold second party free and harmless of and from all costs, expenses and counsel fees which second party may be compelled to pay out in defending itself and its property from any such claim or claims. The first party further covenants and agrees that any and all farming operations on, or other use of the surface rights of, the premises herein leased to the second party, or the taking, storing, use or transportation by the first party of water or petroleum oil or gas or kindred mineral substances, shall be at the sole risk of the first party, or of any person holding or acting under the first party in that behalf. The first party covenants and agrees that the second party shall not be liable to the first party for pollution of water, or damage [177] to crops, livestock, improvements or other property, by seepage, overflowing or leakage of oil or water, or by breakage or bursting of pipes or otherwise, or for any damage to crops, livestock, improvements, or other property, of any nature whatsoever, whether the same be fixtures or personal property, belonging to the first party and situate on the four parcels herein leased to the second party, or on any of them, and covenants and agrees to hold the second party harmless from any and all claims and demands of any nature whatsoever which may be made against

the second party for damages or injuries suffered, or claimed to have been suffered, in respect of such crops, livestock, improvements, or other property, whether the same be fixtures or personal property, or in respect of personal injuries suffered, or claimed to have been suffered, by any person who may be on or about any of the four parcels herein described, in connection with the farming operations or other use of the surface rights thereof of the first party, or in connection with the taking, storing, use or transportation by the first party of water or petroleum oil or gas or kindred mineral substances, and whether said damages or injuries may have been, or may be claimed to have been sustained or caused by reason of, or in connection with, the operations of the second party pursuant to this instrument, or its possession or use of the premises herein leased or of the property herein sold to it, or of the rights or rights of way herein granted, and will likewise save and hold the second party free and harmless from all costs, expenses and counsel [178] fees which it may be compelled to pay out in defending itself and its property from any such claim or claims; provided that nothing herein contained shall be deemed to relieve the second party from liability for damages or injuries caused by its neglect or misconduct, after notice from the first party.

[Second party may remove oil, etc.]

Subject to its royalty obligations, conditions, payments and deliveries to first party herein contained

and reserved to first party, and the limitations herein contained, the second party shall have the right to remove and take away from said premises such petroleum oil, natural gas and kindred mineral substances as it may find therein and thereon.

[Drilling obligations of second party.]

Second party covenants and agrees that within ninety (90) days from the date hereof it will actually commence the drilling of at least three wells for the production of oil or gas upon said premises, and that it will prosecute the drilling of said wells continuously and diligently to completion.

The second party shall at all times from and after eight months after the date of this instrument keep ten (10) strings of tools for the drilling of wells and production of oil or gas in continuous operation on the premises hereinabove described while the total gross production of petroleum oil from said premises is under ten thousand (10,000) barrels of oil per day. Thereafter the second party shall keep five (5) strings of such tools in continuous operation on said premises while the total gross production of petroleum oil from said premises is under twenty thousand (20,000) [179] barrels of oil per day. Thereafter and while the total gross production from said premises is twenty thousand (20,000) barrels of petroleum oil or more per day the second party shall not be obligated to operate any further strings of tools; but nothing herein contained shall be taken to prohibit the second party from drilling

as many wells and from operating as many strings of tools on the premises or the portions thereof which are subject to this instrument as it may desire.

[Offset wells.]

The second party agrees to promptly offset all paying or drilling wells drilled on adjacent land by it or by any other person, within five hundred (500) feet of the boundary lines of Parcels One (1) and Two (2) herein described, by drilling and thereafter operating in a thorough workmanlike and effective manner on said leased premises along said boundary lines any paying wells while said wells on such adjacent property are being operated or drilled. Offsetting wells shall be located within five hundred (500) feet of the boundary line, and so far as practicable, at least as near to said boundary line as such wells are drilled on the adjacent property and equal thereto in number. Strings of tools operated by the second party in drilling such offset wells shall be included in computing the total number of strings of tools which the second party is obligated to operate. It is understood and agreed that there are now being drilled by the first party upon said premises two wells. [Existing wells.] The strings of tools operated by the first party in the drilling of said wells shall be deemed a part of the strings of [180] tools which the second party is obligated hereunder to operate, so long as the second party continues the operation thereof. And

in computing the total gross production of oil from the premises the present or future production from wells heretofore drilled or now being drilled on the premises shall be included.

[Suspension of drilling.]

The drilling obligations of the second party hereunder shall be suspended while, but only so long as, the second party is prevented from complying therewith in part or in whole by strikes, lock-outs, acts of God, unavoidable accidents or other matters beyond the control of the second party.

[Cessation of drilling.]

If the second party so elects it may at any time and from time to time cease the operation of all or any part of the number of strings of tools, the operation of which is herein provided for. But unless the second party shall thereupon and within eight (8) months from date of notice from the first party so to do, resume the operation of the number of strings of [Surrender of land except ten acres for well.] tools herein specified, the second party shall surrender to the first party all the land hereinabove described free and clear from all claims under this instrument, except ten (10) acres of said premises, for each well drilled that produces oil in paying quantities or that the second party is pumping or for which the second party is diligently drilling; such acreage to be selected by the second party in such form as to best protect such wells in the judgment of the second party from drainage, but as near a rectangle form as is pos-

sible for each ten acres so selected allowing ten acres for [181] each of said wells, provided that on each ten acres so selected there shall be situated a well producing oil in paying quantities, or which the second party is pumping or for which it is drilling.

Such surrender shall be by appropriate instruments in writing, duly executed and acknowledged so as to entitle the same to be recorded and second party covenants and agrees that it will execute and deliver such instruments when thereunto demanded by the first party. In the event that the second party shall surrender this instrument as to all portions of the premises except ten acres for each well, as hereinbefore provided, the second party may continue to hold, operate and drill additional wells on the land so retained as long as oil or gas is produced in paying quantities therefrom or the drilling of additional wells is progressing diligently thereon, but not beyond the expiration of the term of this instrument or its earlier termination as herein provided.

[Gas computed as part of production.]

For the purpose of fixing the drilling obligations of the second party wells producing gas shall be included in computing the gross production from said premises. And for such purpose twelve thousand (12,000) cubic feet of gas sold off the premises shall be taken as the equivalent of one barrel of oil, but nothing herein contained shall obligate the second [Second party not obligated to save gas.] party

to prospect for, drill for, produce, develop, save, store, market, or transport gas or kindred mineral substances, or any of them other than petroleum oil, nor shall gas be deemed as part of the production un- [182] less the same is sold and delivered from off the said leased premises. At the option of the first party the second party shall store, from time to time, during the term of this instrument, free of charge, but at first party's risk, for thirty (30) days in tanks pro- [Storage or purchase of realty oil.] vided by the second party on said premises the royalty oil of the first party when and as the same is ascertained, or at the option of the first party the second party shall purchase said royalty oil from the first party and shall pay the first party therefor the highest price which the second party is then paying or is then obligated to pay at such time to others for oil of like grade and gravity produced in the same vicinity, or in the Whittier-Fullerton field. If there be no such price, then the price to be paid by the second party to the first party shall be fixed by mutual agreement, and if the parties cannot agree as to the price so to be paid, then the first party shall take its royalty oil in kind.

[Notice of option.]

From time to time, whenever the first party exercises its option with reference to the delivery of its royalty in kind, or the payment therefor by the second party, the first party shall give to the second

party thirty (30) days' notice of such exercise of option. [Storage of royalty oil.] The second party whenever it shall store the royalty oil of the first party shall separately store the royalty oil produced and saved from each of parcels One and Two hereinabove described, and shall not mingle the same, but the second party shall not be obligated to separately tank or store oil produced or saved from different wells on the same parcel. [183]

[Royalty after five years.]

After the period of five (5) years from the date hereof the second party shall deliver to the first party when and as produced as royalty on the part of the land where produced and saved a one-fourth (¼) part of all oil produced and saved on the premises, which one-fourth (¼) part of such oil is herein reserved to the first party. For the period of five (5) years from the date hereof the second party shall not be obligated to pay or deliver to the first party as royalty or otherwise any part of the oil up to seven hundred and thirty thousand (730,000) barrels of oil produced [Royalty during first five years.] and saved by the second party on the premises in each of said five (5) years, but the second party shall have and take the first seven hundred and thirty thousand (730,000) barrels of oil, or such part thereof as may be produced and saved in any one year during each of the first five years from the date hereof, free of royalty to the first party. If the production is in excess of seven

hundred and thirty thousand (730,000) barrels of oil in any one year during the first five (5) years of said time, then all oil produced from parcel number one up to 1000 barrels per day shall constitute a part of the oil to be taken by second party free of royalty. The royalty reserved by the first party and which the second party pursuant hereto shall be obliged to deliver to the first party during the period of five (5) years from date hereof, shall be only one-fourth (¼) of the oil produced and saved from said premises in excess of seven hundred and thirty thousand (730,000) barrels in any one of the said years, [184] but thereafter such royalty shall be one-fourth (¼) of all the oil produced and saved from the premises.

[Tank reservation.]

This instrument is subject to the reservation that the first party may, and first party hereby reserves the right to, erect at its own expense on each of the four parcels herein described a tank or tanks sufficient in number and capacity to receive, and for the purpose of receiving royalty oil, for the storage necessary for the sale and transportation thereof from such tank or tanks with rights of way across the premises for pipe lines, telephone and telegraph lines for the purpose of transporting such royalty oil. Provided, that such pipe lines, telephone and telegraph lines, tank or tanks, shall be constructed and maintained on each of said parcels in such manner as to interfere as little as possible with the

operations of the second party hereunder, and shall after notice to first party be moved at second party's expense if second party's operations so require. [First party may use facilities at Los Nietos.] The first party shall have the right to use free of charge tracks, make connections with, and use loading racks of second party at Los Nietos for loading and transportation of said royalty oil.

[Gas royalty.]

The second party shall pay to the first party two (2¢) cents for each one thousand (1000) cubic feet of gas measured on an eight (8) ounce base produced and sold off the premises by the second party, or used by the second party on other premises than those hereinabove described or in operations not pertaining to the drilling, developing or operation of the premises hereinabove described and not pertaining to the storage [185] or transportation of the products produced from the said premises, or in manufacturing or transforming said gas into some other product for either use or sale.

[Royalty payments.]

All payments of royalty from the second party to the first party shall be made by the second party on the fifteenth (15th) day of each and every month of said term of this instrument, or while this instrument remains in force, calculated on the production of the preceding calendar month.

[Monthly statements.]

The first party shall be furnished monthly by second party not later than the fifteenth day of each

and every month of said term with a true statement of all the oil produced and saved on the said leased premises during the previous calendar month.

[Logs.]

Second party covenants and agrees that it will, during the term of this instrument, and while it is in force, keep an accurate log or record of each well in accordance with its practice at the time, and will furnish copies of such log or record to the first party at the end of each calendar month.

[Accounts and records of second party's operations.]

Second party further covenants and agrees that it will at all times during the term of this instrument, and while it remains in force, keep such full, true and just books of accounts and records on said premises of its operations, conducted thereon and therein, as shall fully, truthfully and completely show from time to time and from day to day the total amount of petroleum oil produced and saved, and of gas sold and delivered off said premises, or manufactured on said premises into other products, and of other com- [186] mercially valuable substances sold by said second party from said land, and said first party and the duly accredited and authorized representative or representatives of first party for the purpose of verifying the amount of oil produced and saved from said premises and the amount of royalty due to first party, shall have at all reasonable times during reasonable business hours full, free and unimpeded access to all such books and accounts, papers, files, records, reports, and log book on the premises, and the right to

inspect and audit and examine the same and take copies of the same, and to examine and inspect the leased premises and all wells drilled, operated, or being drilled or operated. [Monthly statements.] And the second party shall and will, during the term of this instrument render monthly statements on or before the tenth (10th) day of each calendar month to the said first party, addressed to its office at East Whittier, California, or to such other address as it may hereafter appoint and direct in writing, showing the total amount of all oil produced and saved and of all gas or other kindred mineral substances produced and sold or delivered by the second party from said parcels one and two during the preceding calendar month. [First party's inspection of oil runs.] The first party shall also have the right to have a representative upon said land who shall be entitled to inspect the run of oil produced and saved therefrom, or amount of gas sold off the premises, and for the purpose of facilitating such inspection it is further covenanted and agreed that before any gas is exported from said land the same shall be run through a meter or meters which [187] [Gas meters.] shall be open to and subject to the test and examination of the duly accredited representative or representatives of first party; and before any oil shall be exported from said premises the same shall have been pumped into and run off from tanks whose strapping and gauging the first party or its duly accredited representative or representatives shall have the privilege of checking and verifying; with the right to first party of sampling said oil for purposes of analysis thereof.

[Second party to operate paying wells.]

The second party agrees to pump and operate in a thorough and workmanlike and customary manner all wells on said leased premises or that may be hereafter drilled thereon while the same are producing oil in paying quantities.

[Defining paying well.]

A well producing oil in paying quantities within the meaning of this present instrument shall be a well producing not less than twenty-five (25) barrels of oil a day after thirty (30) days' continuous pumping, unless second party elects to consider a less quantity a paying quantity.

[Second party to plug abandoned wells; shutting off water.]

The second party shall not abandon any well without effectually plugging the same so as to prevent the water from invading the oil measures below. During the drilling or operating of any well on said premises, the second party shall at all times and in a timely and workmanlike manner use every endeavor and the most and best approved methods to prevent and shut off any water that may have been or may be encountered in such wells from invading the oil measures below. [188]

FORFEITURE, SPECIFIC PERFORMANCE AND DAMAGES.

[90 days' notice before forfeiture declared.]

No forfeiture will ever be claimed by the first party of this instrument or of any part thereof

unless the first party shall first give to the second party ninety (90) days' notice in writing at the office of the second party in San Francisco, California, by registered mail, such ninety (90) days to commence to run with the receipt of such notice by the second party.

[Second party's right to specific performance and damages.]

Upon the failure of the second party to comply with any of the covenants, stipulations and agreements, conditions or terms herein set forth after ninety (90) days' notice in writing as aforesaid, the first party may, at its option, by appropriate action in a court of law or equity, or otherwise, enforce specific performance of such covenant, stipulation or agreement, condition or term, and recover damages occasioned by such failure of the second party to comply therewith; [Forfeiture for failure to drill or pay royalty] provided that if the second party after ninety (90) days' notice given as aforesaid, shall fail to pay and deliver to the first party any royalty or royalties or payments due hereunder, or if the second party, after such ninety (90) days' notice given as aforesaid, shall fail to proceed with its drilling obligations as herein provided, and such failure of the second party to pay or deliver such royalty or drill is not expressly provided for in this instrument, the first party may, at its further option, claim a forfeiture of this instrument, and of the rights of the second party therein and thereunder, and thereupon all of

the rights of the second party under this instrument shall immediately cease and determine, and said instrument shall be canceled, [189] and said leased property shall return to the first party, and said first party, its successors or assigns, shall have the right to immediately re-enter said premises and oust the second party and all persons therefrom and repossess the same as in its former estate; provided that no surrender, termination or forfeiture of this instrument in whole or in part, shall affect the rights of the second party as to any wells producing oil or gas or which the second party is pumping, or on which it is drilling, or in or to ten (10) acres for each of such wells selected as herein provided. [Second party to retain wells with ten acres for each well.] But the second party delivering and paying the royalty in the manner herein provided, shall continue in the possession of each well or wells which are producing or which it is pumping or on which it is drilling, together with each of said ten (10) acres for each of such wells, with all rights and privileges as to such acreage which are herein granted to the second party as to the premises herein leased, and subject to and upon all the terms and conditions of this instrument, together with all rights of ingress, egress and regress to and from the same, and all water rights, and including all rights of way for telephone and telegraph lines, and for pipe lines for the transportation of oil, gas and water on, in, under and across the four parcels herein described, or any of them, or between any

of said parcels, for the full term of forty (40) years from the date hereof as hereinabove provided.

No surrender, termination or forfeiture of this instrument, in whole or in part, shall affect the right or [190] [Rights of way and title to property not affected by forfeiture.] title of the second party in or to any rights of way, granted to the second party by separate instrument as herein referred to, or in or to the rights of way, water rights or other rights and privileges necessary and convenient to the possession of any acreage or wells retained by the first party as herein provided, or in or to any of the personal property, fixtures or other property, purchased by it as hereinabove provided, excepting only such property as is not removed by it from the premises before the expiration of ninety (90) days after the total cessation of second party's possession hereunder of said premises or of any part thereof whereon such property not so removed may be situate.

[Grounds of forfeiture.]

The first party shall not be entitled to a forfeiture or termination of this instrument for breach by the second party of any of the covenants, stipulations and agreements, conditions or terms herein set forth except the covenants and obligations of the second party to pay and deliver to the first party the royalties and payments herein provided, and to drill as herein provided, and then only after notice and continued failure of the second party as here-

inbefore specified. But as to the breach by the second party of any and all other covenants, stipulations, and agreements, conditions or terms herein contained, the first party shall have and be relegated to its remedy by specific performance and to its rights to damages.

[First party free gas.]

The first party shall be entitled to gas for domestic use in two buildings on the premises herein leased, and in three buildings off said premises, free of charge [191] but the use of such gas and transportation thereof shall be at the first party's own risk and cost.

Should first party desire to use any gas produced on Parcel One in its orchards adjacent thereto during the term of this instrument, it shall have the privilege of doing so free of all charges or deductions on the part of second party therefor.

[Removal of property by second party.]

Within ninety (90) days after the termination of this instrument, or after the surrender of any portion of the premises herein leased, or at any other time prior thereto, the second party may remove such property as it may place or install or may have placed or installed on said premises or on any portion thereof, or as may now be thereon, whether the same be fixtures or not, including all property and improvements purchased from the first party pursuant to the provisions hereof, excepting only pipe lines purchased from the first party and which

are in place at the time of such termination or surrender and not theretofore removed by the second party and excepting casing in [Casing in wells.] any well, if the first party elects to have such casing remain in such well and gives notice of such election in writing within ten (10) days after notice that such well is to be abandoned. Notice of the intention of the second party to abandon any well shall be in writing addressed to first party and either delivered or mailed by registered letter to its principal office at least thirty (30) days before such well shall be deemed to be abandoned.

The first party for the considerations hereinbefore recited does further lease to the second party for said [192] period of forty (40) years or so long as second party may be occupying the premises hereinabove described, or any part thereof, those certain premises situate in the County of Los Angeles, State of California, and more particularly described as follows, to wit:

PARCEL THREE.

[Parcel Three. Lease of Los Nietos property.]

Beginning at a point in the southerly line of the Colima Tract (so called) in the Rancho Santa Gertrudes, north fifty degrees (50°) thirty minutes (30′) west two hundred fifty-one and ninety-six hundredths (251.96) chains from the most southerly corner of said tract, and being the southeast corner of the sixty-seven and eighty hundredths (67.80) acre tract of land described in deed from

Eduardo Pollorino and wife to W. H. Hull and Alfred W. Allyn, dated February 15th, 1888, recorded February 16th, 1888, in Book 376, page 154 of Deeds, Records of Los Angeles County; thence along the southerly line of said Colima Tract north fifty degrees (50°) thirty minutes (30′) west six and seventy-five hundredths (6.75) chains, more or less, to its intersection with the northeasterly line of the right of way of the Southern California Railway; thence in a northwesterly direction along said last mentioned line seven and forty-one hundredths (7.41) chains, more or less, to its intersection with the southeasterly line of the right of way of the Southern Pacific Railroad (Whittier Branch); thence along said last mentioned line in a northeasterly direction fourteen and sixty-seven hundredths (14.67) chains, more or less, to its intersection with the easterly line of said sixty-seven and eighty hundredths (67.80) acre [193] tract; thence along said easterly line south thirteen degrees (13°) thirty minutes (30′) west three and ninety-five hundredths (3.95) chains, more or less, to the southwest corner of the tract of land now or formerly owned by D. C. Cartwright; thence south seventy-six degrees (76°) thirty minutes (30′) east forty-two (42) links; thence south thirteen degrees (13°) thirty minutes (30′) west twelve and eighty-seven hundredths (12.87) chains to the point of beginning; containing ten and two-tenths (10.2) acres, more or less.

PARCEL FOUR.

[Parcel Four. Lease of parcel in Whittier.]

Part of lot one (1) in block "M" of the Pickering Land and Water Company's Subdivision of the John M. Thomas Ranch, in the City of Whittier, as per map recorded in Book 21, pages 53 and 54, Miscellaneous Records of said county, described as follows, to wit:

Commencing at the northwest corner of said lot one (1); thence east along the south line of Short Street, 268.71 feet to a point; thence south 180.12 feet, more or less, to a point in the north side of the county road; thence in a northwesterly direction along the north side of said county road, 317.53 feet to the point of beginning.

[Further instruments by second party.]

The first party shall, whenever thereunto requested, execute and acknowledge so as to entitle the same to be recorded, such further instruments of assignment and transfer of the fixtures, rights of way and other personal property of the first party herein granted, bargained, sold, conveyed, transferred, assigned and [194] set over as the second party may, for purposes of record or otherwise, require. The rights of way hereinabove sold, transferred and assigned to the second party, except such rights of way as are granted to the second party by separate instrument as herein referred to, shall by it, by appropriate instrument in writing executed and acknowledged so as to entitle the same to be recorded, be reconveyed, retransferred and

reassigned whenever the second party shall no longer require the same in the use or enjoyment of the acreage and wells thereon, retained by the second party as herein provided in the use or enjoyment of any of the property herein conveyed, transferred, sold, assigned, set over or leased to the second party, or upon the expiration or other sooner termination of the term of this lease.

[Taxes, liens, assessments.]

The second party hereby covenants and agrees to hold the first party harmless against and the premises herein described free and clear of all taxes and assessments of every kind and nature levied and assessed during the life of this instrument upon any of the property of the second party situate on the premises herein leased and shall pay before the same are delinquent any and all such taxes and assessments; and shall hold the first party and the said premises free and clear of all costs, expenses and damages by reason of any liens placed upon said premises on account of the operations of the second party thereon, and shall at all times during the term of this instrument keep the said leased premises free and clear of all liens or claims for damages of every kind or character grow- [195] ing out of the possession or the operations of the second party on said premises.

The second party agrees to repay to the first party all such sums as the first party may be compelled to pay hereunder for the purpose of discharging such taxes and assessments or of removing such

lien or liens by reason of the failure of the second party so to do with interest at seven (7%) per cent. per annum from the date of such payment.

It is hereby further agreed and covenanted on the part of the second party that the first party shall at its option have the right at all times during said demised term, but only after ten days' notice to the second party given as herein provided, to pay any rates, taxes, assessments in this instrument provided to be paid by the second party and levied or assessed upon said premises and reversionary interests therein, remaining unpaid after the same have become due and payable, and after similar notice to second party to pay, cancel and clear off all tax sales, liens, demands and claims arising out of any charges on said property upon or against said demised premises or reversionary interest therein, which charges are herein provided to be borne and paid by the second party, and to redeem said premises from the same or any of them, from time to time, and the amount paid including reasonable expense shall be so much additional rent due from the second party at the next rent or royalty payment day after any such payment with interest thereon at the rate of seven (7%) per cent. per annum from the date of the payment thereof by the said first [196] party until the payment thereof to the said first party by the said second party.

And it is further provided that if the first party at its option and after ten days' notice to the second

party given as herein provided shall advance or pay any such rate, taxes or assessments, or other charges, or pay, cancel and clear off any tax sale or charges or claims arising out of any charges which the second party is obligated to pay under the terms of this instrument, and which are levied or assessed upon and against said demised premises, or the reversionary interest therein, it shall not be obligatory upon the first party to inquire into the validity of any such rate, tax, or assessment, or other charge, or any such tax sale or lien.

If the second party elects to contest the validity of any such rate, tax assessment, tax sale, charge, lien or claim, and indemnifies the first party against loss or damage which may ensue if the same should prove to be valid, the first party shall not after notice from the second party of its election to contest the same, pay, cancel, or clear the same except at its own expense.

[Taxes on premises.]

The first party agrees to pay all taxes assessed, during the term of this instrument, against the premises herein described and on its property situate on said premises; provided that the second party shall pay three-fourths of the increase in taxes arising out of the increase in the valuation of said premises due to the operations of the second party, and the first party agrees to pay one-fourth of such increase in said [197] [Increase due to operations of parties; how paid.] taxes, and an increase of taxes for any year on any ten acres of land on

which the second party drills or has drilled in such year shall be conclusively presumed to have been caused by the operations of the second party and an increase of taxes for any year on any ten acres of land on which the first party has used the surface rights as herein reserved, in such year and on which the second party has not drilled or is not drilling, shall be conclusively presumed to have been caused by the operations of the first party.

[First party not liable for damages from second party's operations.]

The second party covenants and agrees to hold the first party harmless from any and all claims and demands of any nature whatsoever which may be made against the first party for damages or injuries suffered or claimed to have been suffered by any person whether the same be personal injuries or injuries or damage to property by reason of or arising out of second party's operations on said premises, or any of them, and will likewise save and hold the said first party free and harmless of and from all costs, expenses or counsel fees which it may be compelled to pay out in defending itself and its property from any such claim or claims.

[Defining "barrel".]

The term "barrel" where used in this instrument shall be deemed to be a barrel of forty-two (42) United States wine gallons in bulk.

[Second party's rights not assignable; exceptions.]

It is further covenanted and agreed by and between the parties hereto that the said second party

shall not transfer or assign this instrument, nor assign nor sub-contract any of the rights herein granted, to prospect for, drill for, produce or develop oil, gas or kindred [198] mineral substances, nor underlet nor sublet the said premises or any part thereof, without the consent in writing of the said first party being first had and obtained, and if at any time during the term of this instrument, in any judicial proceeding or action in any court against the second party, its successors or assigns, or by reason of the bankruptcy of said second party, or its dissolution, or the forfeiture of its corporate rights, a receiver or other officer or other agent shall be appointed to take charge of said premises or business thereon conducted by said second party, its successors or assigns, and shall remain in possession thereof for a period of more than sixty (60) days after final order or final decree in judicial proceedings, whereby said receiver, officer or agent is appointed, or a judicial sale of said leasehold interests pursuant whereto the title to said leasehold interest shall be finally transferred, be had without the written consent of said first party being first had and obtained, then and in that or either of said events the said first party may at its option after ninety days' notice given to the second party as herein provided, terminate this instrument and re-enter said premises and remove all persons therefrom.

Provided that nothing herein contained shall be deemed to prohibit the second party from trans-

ferring or assigning this instrument and all or any part of the right, title and interest of the second party therein and thereunder, to any person or persons, trust estate or trust estates, corporation or corporations, association or associations, of persons which may, by transfer [199] or by operation of law or otherwise, become the successor or successors of the business of the second party in the producing and/or transportation of oil or gas.

[Payments to first party discharge second party's liability.]

The second party shall not be bound by, or be bound to recognize, any pledge, assignment, transfer, sale (judicial or otherwise), or other disposition of the first party's rights to the payments and royalties in this instrument provided to be paid and delivered, but may at all times make such payments, and pay or deliver such royalties to the first party or to the written order of the first party, and be thereby fully discharged of its obligations under this instrument in that behalf.

[Payments to be made without default; exception.]

The said second party covenants and agrees that it will well and truly and faithfully keep and perform each and every of the conditions, covenants, stipulations and agreements herein provided to be kept and performed by said second party, and that it will well and truly and without delay or deduction, except deductions for income taxes or other deductions required by law, make all payments in this instrument provided upon its part to be paid,

[Time of essence.] and it is hereby expressly declared and understood and agreed by and between the parties hereto that time is of the essence of this instrument and of every covenant, promise, stipulation, condition and agreement therein contained obligatory upon the said second party and therein provided to be kept and performed by said second party, or obligatory upon said first party and provided to be kept and performed by said first party. [200]

[Obligations, rights and options cumulative.]

It is further mutually covenanted and agreed by and between the parties hereto that the various rights, powers, options, elections, appointments and remedies of the first party or of the second party contained in this instrument shall be construed as cumulative and no one of them as exclusive of the other or exclusive of any right or privilege allowed by law.

The termination of this instrument for any cause whatsoever, shall not affect the right of the first party to enforce any payment or obligation then due from the second party and unperformed by it.

[Notices; how served.]

It is further agreed as a condition of this instrument that in every case where in the opinion of the first party or under the conditions of this instrument it shall be deemed necessary for the interest of the first party to serve a notice or demand on the second party concerning this instrument or any of the condition or provisions thereof, it shall

be sufficient service of such notice to send the same by registered mail addressed as herein provided.

[Effect of waivers.]

It is further covenanted and agreed by and between the parties hereto that no waiver of the breach of any of the covenants, stipulations, conditions and agreements of this instrument by the first party shall be construed to be a waiver of any succeeding breach of the same covenants, conditions, stipulations or agreements after ninety (90) days' notice given as aforesaid that it is not to be so construed.

Said second party covenants and agrees that upon the termination of said demised term, the second [201] [Surrender on termination.] party will, except as herein otherwise expressly provided, immediately surrender or deliver up said above described premises peaceably to said first party, its agents or attorneys whether said termination is occasioned by abandonment, by forfeiture, or limitation. If the said second party, its agents, attorneys and tenants shall hold the said premises, or any part thereof one (1) day after the same should be surrendered according to the terms of this instrument, it or they shall be deemed guilty of unlawful detainer of said premises under the statute and shall be subject to eviction and removal forcibly or otherwise with or without process of law. [Holding over.] And it is further agreed that if the said second party shall hold over the said term of this

instrument with the consent, express or implied, of the first party, such holding shall be construed to be a tenancy only from month to month, and the said second party will pay the rentals and royalties herein provided for such further time as it may hold the same.

[Not a mining partnership.]

This instrument is not a mining partnership.

[Covenant for peaceable possession.]

The first party covenants and agrees to maintain and defend the possession and peaceable enjoyment by the second party of all the premises herein leased and of every part thereof for the full term of this instrument, or while it remains in force, while and so long as the second party observes and performs all of the terms, covenants and conditions of this instrument on its part to be kept and performed. [202]

RIGHTS OF WAY.

[Permanent rights of way to second party.]

The first party, in part consideration of the payments and other considerations hereinbefore referred to, will execute to the second party an instrument granting to it permanent rights of way, from time to time to construct, maintain, operate, remove or enlarge pipe lines, telegraph and telephone lines, across lands to the first party, the form of which instrument has been agreed upon between the parties hereto, and will be executed contemporaneously with the execution hereof.

TITLE.

[Examination of title; provisions as to defects, if any.]

The second party shall have ninety (90) days from the date hereof within which to examine the title of the first party to the premises herein described, and if in the course of such examination any defect in said title which would render the same unmarketable should be discovered, such defect shall within said period of ninety (90) days be called to the attention of the first party and said first party shall have six (6) months from the date thereof within which to cure such defect by proper legal or other proceedings. If the first party fails so to remove such defect, the second party shall have three (3) months thereafter in which to remove the same, and may do so at first party's expense, not exceeding one thousand dollars ($1,000). Unless within ninety (90) days from the date hereof the second party shall in writing report such defect, or if such defect, if any, be remedied within six (6) months by the first party, or within three (3) months thereafter by the second party, this [203] instrument shall remain in full force and effect; otherwise this instrument shall forthwith terminate and the second party shall vacate the premises and remove all material which it may have placed thereon and return and restore to first party all property received from first party and all oil taken from the premises or the value thereof, and the first party shall return to the second party

the considerations paid and delivered by the second party to the first party. If a defect in the title be discovered as hereinabove referred to, the second party's obligations to make the payments herein provided for, and to drill as herein provided, as well as the running of the time within which the second party shall drill, shall be suspended until said defect is removed or this instrument cancelled.

PREVIOUS CONTRACTS.

[Previous contracts.]

The contracts heretofore entered into between the parties hereto of and concerning the purchase of oil by the second party from the first party are hereby terminated and declared to be of no further force and effect from and after the date hereof.

GENERALLY.

[General.]

It is mutually covenanted and agreed by and between the parties hereto that this instrument and the provisions, rights and obligations thereof shall extend to and bind and inure to the benefit of (as the case may require) not only the parties hereto but each and every of their successors and assigns, and wherever in this instrument a reference to either of the [204] parties hereto is made such reference shall be deemed to include, wherever applicable, and refer to, the successors and assigns of such party the same as if in every case expressed. This instrument shall be executed in duplicate and the said first party shall have and hold one executed

copy, and the said second party shall have and hold the other executed copy.

IN WITNESS WHEREOF, the said parties hereto have by resolution of their respective Boards of Directors duly adopted and thereunto authorizing caused their respective corporate names to be hereunto signed and their respective corporate seals to be hereunto affixed by their duly authorized officers whose names are respectively hereunto undersigned.

MURPHY OIL COMPANY,
By WILLIAM H. MURPHY,
Its President.
(Seal) And by J. T. F. BAEYERTZ,
Its Secretary.
STANDARD OIL COMPANY,
By D. G. SCOFIELD,
Its President.
(Seal) And by F. H. HILLMAN,
Its Secretary.

Approved as to form,
OSCAR SUTRO,
BRADNER W. LEE. [205]

State of California,
City and County of San Francisco.—ss.

On this first day of December, in the year nineteen hundred and thirteen, before me, Frank L. Owen, a notary public in and for the said City and County of San Francisco, personally appeared William H. Murphy, known to me to be the president, and J. T. F. Baeyèrtz, known to me to be the sec-

retary of Murphy Oil Company, the corporation described in and that executed the within instrument, and also known to me to be the persons who executed it on behalf of the corporation therein named, and they acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(Seal) FRANK L. OWEN,
Notary Public in and for the City and County of San Francisco, State of California.

State of California,
City and County of San Francisco.—ss.

On this first day of December, in the year nineteen hundred and thirteen, before me, Frank L. Owen, a notary public in and for the said City and County of San Francisco, personally appeared D. G. Scofield, known to me to be the president, and F. H. Hillman, known to me to be the secretary of Standard Oil Company, the corporation described in and that execu- [206] ted the within instrument, and also known to me to be the persons who executed it on behalf of the corporation therein named, and they acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(Seal) FRANK L. OWEN,
Notary Public in and for the City and County of San Francisco, State of California.

State of California,
City and County of San Francisco.—ss.

William H. Murphy, being first duly sworn, deposes and says: That he resides in the City of Detroit, State of Michigan; that he is the president of the Murphy Oil Company, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporation's seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

WILLIAM H. MURPHY.

Subscribed and sworn to before me this first day of December, 1913.

(Seal) FRANK L. OWEN,
Notary Public in and for the City and County of San Francisco, State of California. [207]

State of California,
City and County of San Francisco.—ss.

D. G. Scofield, being first duly sworn, deposes and says: That he resides in the City of Alameda, State of California; that he is the president of the Standard Oil Company, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporation's seal; that it was so affixed by order of the board of directors of

said corporation, and that he signed his name thereto by like order.

D. G. SCOFIELD.

Subscribed and sworn to before me this first day of December, 1913.

(Seal) FRANK L. OWEN,

Notary Public in and for the City and County of San Francisco, State of California.

THIS IS TO CERTIFY that we and each of us are stockholders of Murphy Oil Company, a corporation, owning and holding of record the number of shares of the capital stock of said Murphy Oil Company, which said number is set opposite our respective names, to wit:

Names.	Shares.
William H. Murphy, Trustee	16662
William H. Murphy	3334
Bradner W. Lee	1
J. T. F. Baeyertz	1
T. G. Sutherland	1
A. Schinneller	1

[208]

That the instrument of conveyance, transfer and sale and of lease executed by Murphy Oil Company and the Standard Oil Company, corporations respectively, to which this certificate is attached, is by each of us for himself, and not for another, hereby ratified, approved and confirmed, and each of us

does hereby for himself and not for another hereby consent to the same.

Dated, December 1, 1913.

WILLIAM H. MURPHY, Trustee,
WILLIAM H. MURPHY,
BRADNER W. LEE,
J. T. F. BAEYERTZ,
T. G. SUTHERLAND,
A. SCHINNELLER,

State of California,
City and County of San Francisco.—ss.

On this 1st day of December, 1913, before me, Frank L. Owen, a notary public in and for the City and County of San Francisco, State of California, residing therein, duly commissioned and sworn, personally appeared William H. Murphy, Bradner W. Lee and J. T. F. Baeyertz, known to me to be the persons whose names are subscribed to the within consent, and they severally acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at the City and County of [209] San Francisco, State of California, on the day and year first above written.

(Seal) FRANK L. OWEN,
Notary Public in and for the City and County of San Francisco, State of California.

State of California,
County of Los Angeles.—ss.

On this 24th day of December, in the year nineteen hundred and thirteen, A. D., before me, Louis P. Tappeiner, a Notary Public in and for the said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared T. G. Sutherland and A. Schinneller, also known as Albert Schinneller, personally known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in said county the day and year in this certificate first above written.

(Seal) LOUIS P. TAPPEINER,
Notary Public in and for Los Angeles
County, State of California. [210]

State of California,
City and County of San Francisco.—ss.

On this 1st day of December, 1913, before me, Frank L. Owen, a notary public in and for the City and County of San Francisco, State of California, residing therein, duly commissioned and sworn, personally appeared William H. Murphy, trustee, known to me to be the person whose name

is subscribed to the within consent as trustee, and acknowledged to me that he executed the same as such trustee.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at the City and County of San Francisco, State of California, on the day and year first above written.

(Seal) FRANK L. OWEN,

Notary Public in and for the City and County of San Francisco, State of California.

State of California,

City and County of San Francisco.—ss.

THIS IS TO CERTIFY that the Murphy Oil Company, a corporation organized and existing under the laws of the State of California, has an authorized capital of two million dollars ($2,000,000.00), and the number [211] of shares into which it is divided is twenty thousand shares of the par value of one hundred dollars ($100.00) each; that the total amount of the issued capital stock of said corporation and the number of its shares which have been issued and are now outstanding is twenty thousand shares, and that the following named persons are the holders of record upon the books of said company of the number of shares

of its issued capital stock set opposite their respective names, to wit:

Names.	Shares.
William H. Murphy, Trustee	16,662 shares
William H. Murphy	3,334 "
Bradner W. Lee	1 share
J. T. F. Baeyertz	1 "
T. G. Sutherland	1 "
A. Schinneller	1 "
	20,000 shares

(Seal) J. T. F. BAEYERTZ,
Secretary of Murphy Oil Company,
a corporation.

Dated, December 1, 1913. [212]

MURPHY OIL CO.,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket No. 14440. Promulgated March 30, 1929.

1. Legal expenses and a payment in compromise of a suit alleging petitioner acquired oil properties by fraudulent means and seeking to recover the properties, together with an accounting for profits obtained from dealings with such properties, were

not personal expenses, nor were they deductible as business expenses, for that portion allocable to the defense of the claim against title was a capital expenditure.

2. The claim for an accounting was a distinct claim involving a distinct group of assets and that portion of the expenses and compromise payment allocable to the defense and settlement of such claim, if a capital expenditure, has nothing to do with the oil properties and should not be added to the depletable capital account thereof, and, in the absence of evidence permitting a proper allocation of the expenses and payment between the two claims, no allowance may be made as a business expense or as additional depletion. [213]

3. A cash bonus payment by the lessee for an oil and gas lease represents taxable income and, having no relation to exhaustion of resources, does not reduce the depletable base of the lessor.

4. The depletable base determining the depletion allowance under the 1918 Act is reduced by the exhaustion actually sustained in prior years and not by the amount of the deductions allowable for prior years under prior Revenue Acts. Thompson Oil & Gas Co., 15 B. T. A. 993, followed.

Randolph E. Paul, Esq., Valentine B. Havens, Esq., Charles B. McInnis, Esq., Thomas R. Dempsey, Esq., and A. Calder Mackay, Esq., for the petitioner.

John D. Foley, Esq., and Lloyd W. Creason, Esq., for the respondent.

This proceeding results from a determination of deficiencies in income and excess-profits taxes for the

calendar years 1919 and 1920 in the amounts of $76,740.20 and $321,660.33, respectively, all of which are in controversy. The errors assigned are as follows:

(1) The respondent erred in refusing to allow, as a deduction from gross income for the year 1919, the sum of $1,200,000 paid in that year in settlement of a suit for an accounting brought against the petitioner relative to its Coyote Oil Properties.

(2) The respondent erred in refusing to allow as a loss deduction for the year 1919 the sum of $170,877.24 paid in that year as legal expenses in defending an action against the petitioner for an accounting relative to a portion of its oil properties, to wit, its Coyote Oil Properties.

(3) The respondent further erred in determining that the legal expenses incurred in 1918 and 1919 and the amount of the compromise payments in 1919 in connection with such suit constitute capital expenditures, and at the same time failing to determine that such amounts should be amortized over the remaining life of the said oil properties.

(4) The respondent erred in deducting from the capital sum returnable through depletion of the petitioner's Coyote Oil Property, an amount of $4,517,402.70, representing a bonus received by the petitioner upon the leasing of the said oil property, in computing the amount of depletion sustained by the petitioner in connection with the said Coyote Oil Property for the calendar years 1919 and 1920.

(5) The Commissioner erred in reducing petitioner's depletable base for both the Whittier and

Coyote oil properties by an amount alleged to represent depletion sustained on the March 1, 1913, value and subsequent cost of the said properties during the period from March 1, 1913, to December 31, 1915, whereas he should have reduced petitioner's depletable base by the amount of depletion which [214] petitioner was legally entitled to take as a deduction in determining its taxable income for the said period from March 1, 1913, to December 31, 1915.

FINDINGS OF FACT.

Petitioner corporation was organized on or about August 18, 1904, under the laws of California and has its home office at Whittier, Calif. It took over from Simon J. Murphy certain oil properties among which was an oil and gas lease on certain land situated in California and owned by Domingo Bastanchury. The petitioner, through Edmund W. Bacon, one of its officers and its agent, purchased 2,240 acres of land (hereinafter referred to as the Coyote properties) covered by such lease for $35 per acre, or $78,400, the deed to Murphy being dated December 15, 1904, and the deed from Murphy to petitioner being dated January 9, 1905. The purchase agreement involved also a cancellation of the oil and gas lease and the leasing of the surface rights to Bastanchury for 10 years for grazing purposes.

At the time Bacon purchased property a well (hereinafter referred to as well No. 1) had been drilled to considerable depth under the lease, drilling operations had ceased, and the well had been

capped. Drilling operations were resumed after the land was acquired by petitioner.

On August 26, 1918, after petitioner had leased the Coyote properties to the Standard Oil Co. as set out below, Maria Bastanchury, as administratrix of Domingo Bastanchury, filed a complaint in the Superior Court of Los Angeles County against petitioner and Bacon. The complaint alleged that petitioner and Bacon had fraudulently misrepresented to the Bastanchurys that well No. 1 was a dry hole, that indications of the presence of oil were destroyed or covered up to prevent the Bastanchurys from learning of their existence, and, that petitioner was about to abandon the lease. It was further alleged that no grounds for suspecting fraudulent misrepresentations had been discovered by the Bastanchurys until shortly before the filing of the complaint; that the misrepresentations had been made to induce complainants to sell the property for far less than its real worth; and that the Bastanchurys relied upon the misrepresentations in canceling the lease and selling the land.

The bill prayed that the defendants be required to account to plaintiff for all moneys or other things of value (in excess of $78,400, the price paid) obtained by them from their dealings with the Coyote properties, or from their dealings with the proceeds from the sale or operation thereof. It was also prayed that the defendants be required to assign and transfer to plaintiff all rights to receive such moneys and things of value in the future; that a receiver be appointed [215] to collect and receive from

the then lessee, the Standard Oil Co., for the benefit of the plaintiff that which such lessee has become obligated to pay defendants as respects such properties; and such other and further relief as the court may deem meet and agreeable to equity, the premises considered, and for costs.

The answer filed late in 1918 denied all of the allegations set forth in the bill. The answer alleged that plaintiff, or her deceased husband, his heirs, devisees and personal representatives, had knowledge or notice by 1906 of all of the facts alleged to indicate fraud, that defendant Bacon had received any portions of the moneys or things of value derived from dealing with the land; that the land when purchased had a value in excess of $87,400. Other defenses set up in the answer include the statute of limitations (sec. 318, 319, 338, 343 and 353, Code of Civil Procedure of the State of California); laches; adverse possession and user since January of 1905; drilling and development of the property (with the knowledge and acquiescence of the Bastanchurys) by petitioner at heavy expense until the property was leased in 1913 which greatly enhanced the value thereof; transfers of stock of petitioners to purchasers for value without notice of the alleged fraud, etc.; and alleged the relief prayed for would be inequitable and that plaintiff's remedy, if any, was for damages.

Legal expenses incurred during the year 1918 amounted to $32,151.77. During the year 1919, further legal expenses totaled $170,877.24. During the latter year judgment in the amount of $1,200,000, as

damages for the alleged wrongful acts was entered against, and paid by, petitioner in such suit pursuant to an agreement between the parties in compromise settlement. Petitioner, after investigation, had concluded that the action had no merit, but agreed to pay the amount agreed upon in compromise rather than continue the litigation, as the anticipated cost thereof would have equaled the amount of the settlement. Petitioner also deemed it advisable to avoid the disagreeable notoriety accompanying the suit. An instrument was executed by the Bastanchurys, including all the heirs and legatees, releasing petitioner, and all other persons or corporations claiming to own any interest in the land conveyed by the deed of December 15, 1904, from any further causes or actions for damages or rights on account of the alleged fraudulent acts.

The legal expenses incurred in 1918 were deducted as an expense in that year. Those incurred in 1919, together with the $1,200,000 paid in final settlement, were deducted as expenses of that year. The deductions claimed were disallowed.

The respondent failed or refused to treat such legal expenses and the amount paid in compromise settlement as capital amortizable over the remaining life of the oil properties. [216]

By an instrument dated December 1, 1913, petitioner leased certain oil properties, known as the Whittier and Coyote oil properties, to the Standard Oil Co. of California for 40 years, and by the same instrument, sold to that company specified personal property, including fixtures, appurtenances,

tools, machinery and equipment, which were at that time located on or used in connection with such oil properties. The instrument recited cash consideration of $10 (and other consideration, the receipt of which was acknowledged, which a stipulation shows to have totaled $1,500,000) and additional payments to be made from time to time. The due date, the actual date of payment, and the amount of such additional payments may be tabulated as follows:

Due date	Date paid	Amount
Apr. 30, 1914	Apr. 1, 1914	$1,000,000
Mar. 31, 1915	Mar. 1, 1915	250,000
June 30, 1915	June 1, 1915	250,000
Sept. 30, 1915	Sept. 1, 1915	250,000
Dec. 31, 1915	Dec. 31, 1915	250,000
June 30, 1916	July 13, 1916	500,000
Dec. 31, 1916	Dec. 1, 1916	500,000
Dec. 31, 1917	Dec. 1, 1917	500,000
Dec. 31, 1918	Dec. 1, 1918	500,000
Total		4,000,000

The $1,500,000 paid down brings the total of such payments to $5,500,000. Petitioner also was to receive for the first five years a royalty of one-fourth of all oil produced in each year in excess of 730,000 barrels, and after the five-year period the royalty reserved amounted to one-fourth of the oil produced. The gas royalty agreed upon was a payment of 2 cents for each 1,000 cubic feet of gas saved and sold.

Of the $5,500,000 payments, the respondent determined that $326,404.82 represented payment for the personal properties sold and the remainder of $5,173,595.18 represented a bonus payment on the two properties. The respondent allocated such total bonus payment, $656,192.48 to the Whittier property and $4,517,402.70 to the Coyote property, and deducted the amount of such bonuses from the capital sums returnable through depletion in determining the unit of depletion sustained in 1919 and 1920, the years in controversy. Depletion deductions were based on March 1, 1913, value.

The gross production of the two properties in barrels of oil and the value thereof at the mouth of the wells from March 1, 1913, through the year 1915, is as follows:

	Coyote		Whittier	
During period	Barrels	Amount	Barrels	Amount
Mar. 1, 1913, to Nov. 30, 1913	344,094.63	$292,480.44	221,178.85	$133,968.52
Dec. 1, 1913, to Dec. 31, 1913	6,697.47	5,744.52	.....	.....
Calendar year 1914	151,424.90	127,000.42	5.50	3.30
Calendar year 1915	322,064.60	278,124.21	16,943.54	10,166.13
Total	824,281.60	703,349.59	238,127.89	144,137.95

[217]

The depletion determined by the respondent to have been sustained by the petitioner from March 1, 1913, through the year 1915 is as follows:

	Period, Mar. 1, 1913, to Dec. 31, 1913	1914	1915	Total
Whittier	74,048.17	$17,738.65	$38,021.95	$129,808.75
Coyote	183,327.41	135,572.08	306,749.76	625,649.25
Total	257,375.58	153,310.73	344,771.69	755,458.00

The respondent reduced petitioner's depletable base by the above amount of $755,458 in determining the depletion allowable for the years 1919 and 1920.

The respondent determined that the amount of oil produced from petitioner's share of the Coyote Oil property during the years 1919 and 1920 was 1,644,897 barrels and 1,340,237 barrels, respectively.

The respondent determined the oil reserves in the Coyote property at December 31 of 1918 and 1919 amounted to $5,051,424 and 3,406,527 barrels, respectively.

OPINION.

SIEFKIN: The issues raised in the first three allegations question the respondent's determination that the cost of the litigation in question and the payment made in compromise are neither deductible expenses nor capital cost which may be amortized over the remaining life of the properties. Apparently such determination was based on the conclusion that such expenditures represented personal expenses.

We think such conclusion unsound. The act complained of was committed, if at all, in the course of a business transaction. *Kornhauser v. United States,* 276 U. S. 145, citing with approval an administrative ruling of the Bureau where expenses of a suit for malpractice were allowed as a business expense deduction by a physician. In this case the suit brought was in no sense a prosecution for a crime or an attempt to impose a penalty. The

only remedy sought was a restitution of the property, together with income derived therefrom in the *interim*. See *Consolidated Mutual Oil Co.*, 2 B. T. A. 1067; and *Frederick McLean Bugher*, 9 B. T. A. 1155.

We can not agree, however, with petitioner's contention that the expenses and payment under discussion were deductible as business expenses or losses. The complaint filed in the suit alleged fraud and the relief prayed for was an accounting and that petitioner be required to assign and transfer to complainant all rights to receive moneys and things of value derived from the property in the future. [218] That is, the prayer asks for restoration of the property and all past income therefrom in excess of the consideration paid.

It should be noted at this point that the action was brought to recover two distinct classes of assets. One such class of assets was the oil properties as they existed at the time the suit was instituted. Petitioner recognized that the complaint questioned its title to the property and in answer to the prayer for restoration asserted such relief to be inequitable, and that complainant's remedy, if any, was for damages. The other asset (the accumulated earnings resulting from petitioner's operation or production in years prior to the beginning of the suit) was no longer a part of such oil properties as they had been severed from the realty. They formed a distinct group of assets to which claim was made in the action. It should, therefore, be borne in

mind that, though both claims grew out of the alleged fraud, there were, nevertheless, two distinct claims asserted against two different groups of assets.

To the extent that the expenses and payment were incurred and made in defense of the claim against the oil properties they were capital expenditures. We have repeatedly held that the cost of defending title, whether in the form of legal fees or compromise payments, is a capital expenditure representing additional cost of the property. *Lincoln L. McCandless,* 5 B. T. A. 1114; *Gopher Granite Co.,* 5 B. T. A. 1216; *Seletha O. Thompson,* 9 B. T. A. 1342; *Frederick McLean Bugher, supra; North American Oil Consolidated,* 12 B. T. A. 68; *Phoenix Development Co.,* 13 B. T. A. 414. The decisions in *Kornhauser v. United States, supra,* and *the Superheater Co.,* 12 B. T. A. 5, which are relied upon by the petitioner, are not in conflict with these cases. In the *Superheater* case the contemplated litigation grew out of an action of the board of directors, acting as such. The claim settled did not involve title. In the *Kornhauser* case the legal expenses were incurred to contest a claim against income received, differing fundamentally from the ordinary attack on title, even though the income in question consisted of shares of stock.

In view of such conclusion we must reject petitioner's contention that the total deductions claimed should be allowed. We can not allow the total and it would be idle for us to further consider whether

any part of such total (i. e., that portion allocable to the defense and settlement of the claim for accounting) is allowable as the record furnishes no basis for the apportionment of the whole among the several claims defended or settled.

The petitioner's contention that if the litigation and settlement costs are not deductible they must represent capital expenditures to be added to the amortizable capital value, must likewise be rejected. That portion of such costs which is properly allocable to the defense [219] and settlement of the accounting claim has nothing to do with title to the property or its future depletion. Assuming that such costs were capital expenditures, they relate to a claim against assets or moneys severed from the oil properties. *Frederick McLean Bugher, supra.* Undoubtedly that portion of such costs which we have held allocable to defense and settlement of the claim against the properties should increase the amortizable capital value, but we are again confronted with the fact that there is nothing in the record to permit a proper allocation to determine that amount. Accordingly, we must affirm the respondent's action on the points covered by the first three allegations of error.

The next error assigned is the reduction of depletable capital by the amount of the bonus received by the lessor as part consideration upon leasing the properties to the Standard Oil Co. of California in December of 1913. The respondent determined that $5,173,595.18 of the $5,500,000 payments received

represented such a bonus, and petitioner finds no fault with such allocation. Petitioner complains only of the admitted reduction of the capital base for depletion purposes on account thereof.

The respondent's present contention as set forth in his brief is as follows:

The Commissioner made an error of method in requiring the bonus of $656,192.48 on the Whittier property and the bonus of $4,517,595.18 on the Coyote property to be deducted as of December 1, 1913, from the capital sum returnable through depletion. On November 13, 1926, T. D. 3938 C. B. V.-2, p. 117, was promulgated amending Article 215 of Regulations 45 (1920 Edition) to read as follows:

"*Depletion—Adjustments of accounts based on bonus or advanced royalty.*—(*a*) Where a lessor receives a bonus in addition to royalties, there shall be allowed as a depletion deduction in respect of the bonus an amount equal to that proportion of the cost or value of the property on the basic date which the amount of the bonus bears to the sum of the bonus and the royalties expected to be received. Such allowance shall be deducted from the amount remaining to be recovered by the lessor through depletion, and the remainder is recoverable through depletion deductions on the basis of royalties thereafter received."

While the Commissioner made an error of method in deducting from the depletion basis the *whole amount* of the bonuses as of December 1, 1913, it does not follow that the Commissioner's computa-

tion of the depletion basis is incorrect. There is nothing in the record of this case to show what royalties were on December 1, 1913, expected to be received over the lives of the leases. It is entirely possible that in the interval between December 1, 1913, and December 31, 1918, royalties expected on December 1, 1913, to be received. As to this point the taxpayer must fail for lack of proof.

The respondent confesses error to the extent that he failed to follow the regulation. It remains for us to test the validity of the rule therein promulgated. In *Nelson Land & Oil Co.,* 3 B. T. A. 315, we made it clear that, in our opinion, such a bonus received by a [220] lessor was not a return of capital but is an advance rental or royalty and is taxable as income. That case was followed in *R. H. Hazlett,* 10 B. T. A. 332, and we are not cited and have been unable to find any authority to the contrary. See also *Henry L. Berg,* 6 B. T. A. 1287; *John T. Burkett,* 7 B. T. A. 560; *D. R. McDonald,* 7 B. T. A. 1078; and *R. H. Hazlett, supra,* in which we held that such bonuses were not gains derived from the sale of "capital assets" under the capital gain provisions of the 1921 Act.

The bonus payment in the instant case was a part of the consideration paid for the lease. While expected production undoubtedly was considered in fixing the amount of the bonus, it is elementary under the laws governing such agreements that its payment did not, in any wise, depend upon, or relate to, production. The lessee's liability therefor

was fixed by the terms of the contract. On the other hand, the operation of the principle of depletion depends upon exhaustion of resources through production—i. e., the recovery of capital through its conversion from the form of oil resources or reserves into marketable products or the equivalent received for such product. Under such principle the depletion allowance for the year or years of the bonus payments can only be measured by reference to the oil produced. If, as we have pointed out, the bonus is income, no part of which represents recovery of capital, it follows that any depletion allowance against such income is a departure from the depletion concept. The regulation relied on by the respondent is clearly such a departure. While it might, in some cases at least, produce a more equitable result, the statutory allowance may not be so varied by administrative regulation.

It will be noted that the facts referred to by respondent in the last paragraph of the excerpt from his brief are essential only to the application of the rule laid down in the regulation. On the other hand, the respondent admits that he reduced the depletable base by the amount of the bonus (a known quantity) and we have held as a matter of law that no part of such bonus reduces such base. We can, on the facts presented, determine such action was erroneous. To correct such error we need only require the restoration of the amount subtracted, and it is so ordered.

The question raised by the last allegation was considered in *Thompson Oil & Gas Co.*, 15 B. T. A. 993, and decided adversely to the contention made by the petitioner herein.

Review by the Board.

Judgment will be entered under Rule 50.

MILLIKEN did not participate.

LANSDON, PHILLIPS, GREEN, and MURDOCK dissent. [220a]

[Endorsed]: Filed Dec. 7, 1929.

(Title of Court and Cause.)

PETITIONER'S NOTICE OF SETTLEMENT UNDER RULE 50.

The attached proposed settlement of the deficiency in the above entitled appeal will be presented to the Board on.....at 9:30 a. m., or as soon thereafter as counsel can be heard.

This notice of redetermination is submitted in accordance with the decision of the Board without prejudice to the petitioner's right to contest the correctness of the decision pursuant to the statute in such cases made and provided.

CHAS. B. McINNIS,
Attorney for the Petitioner,
Woodward Building,
Washington, D. C. [221]

(Title of Court and Cause.)

PETITIONER'S REDETERMINATION UNDER RULE 50.

1918.

This redetermination for the year 1918 is submitted solely for the purpose of showing that under the Board's decision, the petitioner had no net income for the year 1918 against which the 1919 net loss could be offset.

Net income finally determined by the Commissioner as set forth in his Certificate of Overassessment for the year 1918		$368,883.32
Depletion adjustment under Board's decision.		
Corrected depletion on petitioner's Coyote property as set forth in the depletion schedule attached hereto, marked petitioner's Exhibit "A".	$3,055,192.28	
Corrected depletion on petitioner's Whittier property as set forth in the depletion schedule attached hereto, marked petitioner's Exhibit "B"	158,531.08	
Total depletion under Board's decision	$3,213,723.36	

[222]

1918 (Continued)

Brought forward	$3,213,723.36	
Depletion allowed by the Commissioner in his Certificate of Overassessment	$2,252,147.48	
Additional depletion under Board's decision		$961,575.88
Loss for the year 1918		$592,692.56

1919		
Net income per 60-day letter		$333,140.09
Depletion adjustment under Board's decision.		
Corrected depletion on petitioner's Coyote property as set forth in the depletion schedule attached hereto, marked petitioner's Exhibit "A".	$2,778,494.22	
Corrected depletion on petitioner's Whittier property as set forth in the depletion schedule attached hereto marked petitioner's Exhibit "B".	193,521.34	
Total depletion under Board's decision	$2,972,015.56	
Depletion allowed by the Commissioner in 60-day letter	$2,072,660.49	
Additional depletion resulting from Board's decision		$899,355.07
Net loss for the year 1919		$566,214.98
1920		
Net income per 60-day letter		$944,589.18

[223]

1920 (Continued)

Brought forward		$944,589.18
Depletion adjustment under Board's decision.		
Corrected depletion on petitioner's Coyote property as set forth in the depletion schedule attached hereto, marked petitioner's Exhibit "A".	$2,263,874.73	
Corrected depletion on petitioner's Whittier property as set forth in the depletion schedule attached hereto, marked petitioner's Exhibit "B".	159,343.21	
Total depletion under Board's decision.	$2,423,217.94	
Depletion allowed by the Commissioner in 60-day lr.	1,689,645.13	
Additional depletion resulting from Board's decision	$ 733,572.81	
1919 net loss carried forward	566,214.98	
		$1,299,787.79
1920 taxable income.		None

1919

Tax previously assessed	None
Correct tax liability	None
Deficiency	None

1920

Tax previously assessed	None
Correct tax liability	None
Deficiency	None

[224]

Petitioner's Exhibit "A"

Murphy Oil Company

DEPLETION SCHEDULE

COYOTE

Year	$ Capital Sum Beg. of Year	Added	Total	Bbls. Reserves Added	Deducted	Total	Bbls. Production Free Oil	Royalty Oil	Total	Unit Cost	$ Depletion Sustained
3/1/13 to11/30/13			$15,710,899.52			41,191,605	—o—	428,351	428,351	.38141	163,377.35
12/1/13 to 12/31/13	15,547,522.17		15,547,522.17	30,572,440		10,190,814	—o—	18,432	18,432	1.52564	28,120.60
1914	15,519,401.57		15,519,401.57			10,172,382	142,329	125,256	268,085	1.52564	191,095.56
1915	15,328,306.01		15,328,306.01			9,904,297	144,836	279,379	424,215	1.54764	432,378.12
1916	14,895,927.89		14,895,927.89			9,480,082	149,719	670,213	819,932	1.57128	1,053,092.28
1917	13,842,835.61		13,842,835.61			8,660,150	161,675	1,410,707	1,572,382	1.59845	2,254,944.60
1918	11,587,891.01		11,587,891.01			7,087,768	167,622	1,868,722	2,036,344	1.634.91	3,055,192.28
1919	8,532,698.73		8,532,698.73			5,051,424	—o—	1,644,897	1,644,897	1.68916	2,778,494.22
1920	5,754,204.51		5,754,204.51			3,406,527	—o—	1,340,237	1,340,237	1.68916	2,263,874.73

NOTE: This schedule same as used for 60 day letter except that bonus is not deducted from Capital Sum.

[225]

Petitioner's Exhibit "B".

Murphy Oil Company

DEPLETION SCHEDULE

WHITTIER

Year	$ Capital Sum Beg. of Year	$ Capital Sum Total	Bbls. Reserves Added Deducted	Bbls. Reserves Total	Bbls. Production Free Oil	Bbls. Production Royalty Oil	Unit Cost	$ Depletion Sustained
3/1/13 to 11/30/13		1,450,207.08		5,983,443		291,902	.24237	70,748.29
2/1/13 to 12/31/13	1,379,458.79	1,379,458.79	4,268,656	1,422,885		6,492	.96948	6,293.86
1914	1,373,164.93	1,373,164.93		1,416,393	39,671	34,898	.96948	33,832.91
1915	1,339,332.02	1,339,332.02		1,341,824	37,664	72,658	.99814	72,522.85
1916		1,266,809.17		1,231,502	32,701	146,843	1.02867	151,052.99
1917		1,115,756.18		1,051,878	20,825	181,736	1.06072	192,771.00
1918		922,985.18		849,317	14,878	145,879	1.08673	158,531.08
1919		764,454.10		688,560		174,309	1.11022	193,521.34
1920		570,932.76		514,251		143,524	1.11022	159,343.21

NOTE: This schedule same as used for 60 day letter except that bonus is not deducted from Capital Sum.

[226]

(Title of Court and Cause.)

DECISION.

The Board having promulgated its opinion in the above entitled proceeding on March 30, 1929, and the petitioner having duly submitted its notice of settlement and recomputation under rule 50, which was set down and called for hearing on January 15, 1930, and it appearing that said recomputation, showing no deficiencies for the years 1919 and 1920, was uncontested by the respondent, it is

ORDERED and DECIDED: That there are no deficiencies for the years 1919 and 1920.

(Signed) LOGAN MORRIS,
Member, U. S. Board of Tax Appeals.

[Endorsed]: Entered Jan. 17, 1930.

A true copy: Teste

(Seal) B. D. Gamble,
Clerk U. S. Board of
Tax Appeals. [227]

[Endorsed]: Filed Jul. 11, 1930.

(Title of Court and Cause.)

PETITION FOR REVIEW

In the United States Circuit Court of Appeals and

ASSIGNMENT OF ERRORS.

Now comes Robert H. Lucas, Commissioner of Internal Revenue, by his attorneys, G. A. Youngquist, Assistant Attorney General, and C. M. Char-

est, General Counsel, Bureau of Internal Revenue, and respectfully shows:

I.

That he is the duly appointed, qualified, and acting Commissioner of Internal Revenue, appointed and holding his office by virtue of the laws of the United States; that the Murphy Oil Company is a corporation organized under the laws of the State of California whose home office is at Whittier, California, and whose return for Federal income and excess profits tax purposes for the calendar years 1919 and 1920 was made to the Collector of Internal Revenue for the Sixth California Collection District, whose office is located in Los Angeles, California, which is within the jurisdiction of the United States Circuit Court of [228] Appeals for the Ninth Circuit.

II.

The nature of the controversy so far as here pertinent is as follows, to-wit:-

The question is whether the depletable base of the lessor of an oil and gas lease is reducible in whole or in part by the amount of cash bonus payments received from the lessee on the ground that they constitute a return of capital in whole or in part, or whether such basis is not so reducible on the ground that such payments represent taxable income in their entirety and have no relation to depletion.

Respondent by an instrument dated December 1, 1913, leased certain oil properties to the Standard

Oil Company of California and in connection therewith received cash bonus payments aggregating $5,173,595.18. Certain oil and gas royalties were also reserved.

In computing the amount of depletion sustained by the respondent in connection with the said oil properties for the calendar years 1919 and 1920, the petitioner deducted from the capital sums returnable through depletion the amount of the aforesaid bonuses received by the respondent on the ground that they constituted a return of part of the respondent's capital investment in the oil properties.

By reason of this action (and other action not here pertinent) the petitioner duly notified the respondent of resulting income and excess profits tax deficiencies of $76,740.20 and $321,660.33 for the calendar [229] years 1919 and 1920 respectively.

From the determination of the petitioner, the respondent appealed to the United States Board of Tax Appeals, and the Board held that the cash bonus payments here in question constituted taxable income in their entirety and should not have been applied in any part by way of reducing the respondent's depletable base or capital investment in the oil properties.

Upon a recomputation of the respondent's tax liability, the Board held that there were no deficiencies in tax for the years 1919 and 1920.

The hearing before the Board was held on October 22, 1928. The interlocutory decision of the Board and its findings of fact and opinion were

promulgated March 30, 1929. The final order of redetermination to the effect that there were no deficiencies in tax for the years 1919 and 1920 was entered on January 17, 1930.

III.

That said petitioner, being aggrieved by the conclusions of law contained in said decision and by the said order of redetermination, desires to obtain a review thereof by the United States Circuit Court of Appeals for the Ninth Circuit: *Wherefore,* he petitions that a transcript of record be prepared in accordance with the rules of the said United States Circuit Court of Appeals for the Ninth Circuit and transmitted to the Clerk of said Court for filing and appropriate action to the end that the errors complained of may be reviewed and [230] corrected by the said United States Circuit Court of Appeals for the Ninth Circuit.

IV.

That the petitioner's assignments of error are as follows:

1. The Board of Tax Appeals erred in holding that cash bonus payments to the lessor by the lessee of an oil and gas lease constitute income to the lessor in their entirety, and that no part of such payments represents recovery of capital by the lessor.

2. The Board erred in holding that no part of such cash bonus payments reduces the depletable base of the lessor.

3. The Board erred in holding that the Treasury Department Regulations covering the instant subject matter are a departure from the depletion concept, and in failing and refusing to follow said Regulations.

4. The Board erred in failing to find and to hold that such cash bonus payments in whole or in part represent a return to the lessor of its capital investment.

5. The Board erred in failing to find and to hold that the depletable base of the lessor is reducible by the amount of such cash bonus payments in whole or in part.

6. The Board erred in redetermining the respondent's 1919 and 1920 tax liability and finding and holding that there were no deficiencies in tax for those years.

7. The Board erred in failing and refusing to approve the deficiencies in tax for 1919 and 1920 as determined by the petitioner. [231]

8. The Board erred in its conclusion of law set forth in the opinion herein. Such conclusions were not responsive to its findings of fact and were contrary to and not supported by the evidence presented.

(Sgd) G. A. YOUNGQUIST,
Assistant Attorney General.
(Sgd) C. M. CHAREST,
General Counsel,
Bureau of Internal Revenue.

Of Counsel:
R. N. SHAW,
Special Attorney,
Bureau of Internal Revenue.

VERIFICATION.

District of Columbia.—ss.

C. M. Charest, being duly sworn, says that he is General Counsel for the Bureau of Internal Revenue and as such is duly authorized to verify the attached petition for review by the United States Circuit Court of Appeals for the Ninth Circuit of the decision of the Board rendered herein; that he has read the said petition and is familiar with the statements therein contained; and that the facts therein stated are true except such facts as may be stated upon information and belief and those facts he believes to be true.

(Sgd) C. M. CHAREST.

Sworn and subscribed to before me this 10th day of July, 1930.

(Sgd) MARCELLETTE M. TAYLOR,
(Seal) Notary Public, District of Columbia.
My commission expires March 31st, 1935. [232]

[Endorsed]: Filed Jul 17, 1930.

(Title of Court and Cause.)

NOTICE.

To Charles B. McInnis, Esq.,
Shoreham Building,
Washington, D. C.

Please take notice that this office today lodged with the United States Board of Tax Appeals on behalf of the Commissioner of Internal Revenue a petition seeking a review of the Board's decision

herein by the United States Circuit Court of Appeals for the Ninth Circuit, a copy of which petition is hereto attached and served upon you.

Dated at Washington, D. C., this 11th day of July, 1930.

(Signed) C. M. CHAREST,
General Counsel,
Bureau of Internal Revenue.

Receipt of the above and foregoing notice, together with a copy of the petition mentioned therein, is hereby acknowledged this 16th day of July, 1930.

(Sgd) CHAS. B. McINNIS,
Attorney of Record for
Respondent. [233]

[Endorsed]: Filed Jul 28, 1930.

(Title of Court and Cause.)

NOTICE.

To Murphy Oil Company,
Whittier, California.

Please take notice that this office today lodged with the United States Board of Tax Appeals on behalf of the Commissioner of Internal Revenue a petition seeking a review of the Board's decision herein by the United States Circuit Court of Appeal for the Ninth Circuit, a copy of which petition is hereto attached and served upon you.

Dated at Washington, D. C., this 11th day of July, 1930.

(Sgd) C. M. CHAREST,
General Counsel,
Bureau of Internal Revenue.

Receipt of the above and foregoing notice, together with a copy of the petition mentioned therein, is hereby acknowledged this 15th day of July, 1930.

(Signed) MURPHY OIL COMPANY,
(Seal) Taxpayer.
By Kenyon F. Lee, Its Secretary. [234]

[Endorsed]: Filed Mar. 25, 1931.

(Title of Court and Cause.)

PRAECIPE FOR RECORD.

To the Clerk of the United States Board of Tax Appeals:

You will please prepare and certify to the clerk of the United States Circuit Court of Appeals for the Ninth Circuit within the time provided by the rules of that court in this respect, as extended, a transcript of record for review herein consisting of the following documents:

1. The docket entries of the proceedings before the Board.
2. Petition of the Murphy Oil Company filed April 24, 1926, together with the attached Exhibit "A" (60-day letter and statement dated February 6, 1926).
3. Amended petition of the Murphy Oil Company filed April 3, 1928, together with the taxpayer's motion for leave to file the amended petition, but omitting the attached exhibits.
4. Second amended petition of the Murphy Oil Company filed September 20, 1928, together

with the taxpayer's motion for permission to file the second amended petition, but omitting the attached Exhibit No. 1, for the reason that it is the same as Exhibit "A" referred to in "2", supra.

5. Answer of the Commissioner of Internal Revenue to the second amended petition.
6. Stipulation "1" filed October 22, 1928, together with all the Exhibits A to F, inclusive, and their parts, as referred to in said stipulation and filed. [235]
7. Findings of Fact, Opinion and Decision of the Board.
8. Notice of settlement under Rule 50, with the attached redetermination under Rule 50, including Exhibits A and B attached, filed by the taxpayer on December 7, 1929.
9. Petition for review and notice of filing, with acknowledgment of service.
10. This praecipe.

(Signed) C. M. CHAREST,
General Counsel,
Bureau of Internal Revenue,
Washington, D. C.

Washington, D. C., March 25, 1931. [236]

(Title of Court and Cause.)

CERTIFICATE.

I, B. D. Gamble, Clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages 1 to 236, inclusive, contain and are a true

copy of the transcript of record, papers and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 29th day of April, A. D. 1931.

(Seal) B. D. GAMBLE, Clerk.

[Endorsed]: No. 6459. United States Circuit Court of Appeals for the Ninth Circuit. Commissioner of Internal Revenue, Petitioner, vs. Murphy Oil Company, a Corporation, Respondent. Transcript of the Record. Upon Petition to Review an Order of the United States Board of Tax Appeals.

Filed May 6, 1931.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.
By FRANK H. SCHMID,
Deputy Clerk.

Nos. 6388 and 6459

United States

Circuit Court of Appeals

For the Ninth Circuit.

MURPHY OIL COMPANY, a Corporation,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent,

and

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

vs.

MURPHY OIL COMPANY, a Corporation,
Respondent.

Upon Petitions to Review an Order of the United States Board of Tax Appeals.

PROCEEDINGS HAD IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 6388.

MURPHY OIL COMPANY,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

STIPULATION TO CONTINUE APPEAL FOR ARGUMENT.

Counsel for the respondent having so requested, it is hereby stipulated and agreed by and between the parties to the above-entitled cause, through their respective attorneys, that this appeal may be continued for hearing from June 10, 1931, to the October, 1931, term, of this Honorable Court. It is further agreed that this cause may be assigned for argument and heard at the same time as the appeal entitled "Commissioner of Internal Revenue vs. Murphy Oil Company," C.C.A. No. 6459.

As grounds for this request, it is shown to the court that the petitions for review prosecuted to this court in the instant case and also in the appeal entitled "Commissioner of Internal Revenue vs. Murphy Oil Company," C.C.A. No. 6459, grow out of the same case before the United States Board of Tax Appeals, and since the transcript of record in the latter case has not yet been printed, it is desired, for the convenience of counsel, that the hear-

ing of the above-entitled cause be continued to the October term and that both cases be assigned for argument on the same date.

RANDOLPH E. PAUL,
Attorney for Petitioner.
C. M. CHAREST,
Attorney for Respondent.

May 13, 1931.

So ordered.

CURTIS D. WILBUR,
Senior U. S. Circuit Judge.

[Endorsed]: Stipulation to Continue Appeal for Argument. Filed May 18, 1931. Paul P. O'Brien, Clerk.

At a stated term, to wit, the October term, A. D. 1931, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the city and county of San Francisco, in the State of California, on Tuesday, the eighth day of December, in the year of our Lord one thousand nine hundred and thirty-one. Present: Honorable CURTIS D. WILBUR, Senior Circuit Judge, Presiding; Honorable WILLIAM H. SAWTELLE, Circuit Judge; Honorable WILLIAM P. JAMES, District Judge.

[Title of Cause.]

ORDER OF SUBMISSION.

ORDERED above causes argued by Mr. Thomas

R. Dempsey, counsel for Murphy Oil Company, a corporation, and by Mr. John G. Remey, Special Assistant Attorney General, counsel for Commissioner of Internal Revenue, and submitted to the Court for consideration and decision.

At a stated term, to wit, the October term, A. D. 1931, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the city and county of San Francisco, in the State of California, on Monday, the eleventh day of January, in the year of our Lord one thousand nine hundred and thirty-two. Present: Honorable CURTIS D. WILBUR, Senior Circuit Judge, Presiding; Honorable WILLIAM H. SAWTELLE, Circuit Judge; Honorable PAUL J. McCORMICK, District Judge.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF JUDGMENT.

By direction of the Court, ORDERED that the typewritten opinion this day rendered by this Court in the above cases be forthwith filed by the Clerk and that a judgment be filed and recorded in above causes in accordance with the opinion filed.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 6388.

MURPHY OIL COMPANY, a Corporation,
Petitioner,

vs.

DAVID BURNET, Commissioner of Internal Revenue,
Respondent,

and

No. 6459.

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

vs.

MURPHY OIL COMPANY, a Corporation,
Respondent.

OPINION U. S. CIRCUIT COURT OF APPEALS.

Petitions to Review Orders of the U. S. Board of Tax Appeals.

Before WILBUR and SAWTELLE, Circuit JJ., and JAMES, District J.

WILBUR, Circuit Judge.—Two petitions have been presented to review a determination of the Board of Tax Appeals. That by the Commissioner claims that by the order of the Board with reference to bonus, payments by the lessee, aggregating

$5,173,595.18, were improperly applied by the Board in estimating the depletion, properly deductible, from the income for the years 1919 and 1920. That by the taxpayer claims an error in regard to the application of the cost and expense of a lawsuit and of money paid in settlement of the same, amounting in the aggregate to $1,370,877.24 ($1,200,000, being the amount paid in settlement and $170,877.24 being the cost and expenses of the litigation). This suit involved only the Coyote property belonging to petitioner. The net income of the taxpayer for these years subject to depletion deductions was respectively $2,636,882.78 and $2,988,550.51.

The facts involved were determined by the Board of Tax Appeals and also appear in part from the computation of tax made by the Commissioner of Internal Revenue by order of the Board in pursuance of their rule 50. This computation of the depletion which is in effect the decision of the Board is to be found in the margin, p. 270.* The facts are undisputed.

In 1903 Simon J. Murphy, petitioner's predecessor, obtained an oil lease of 2,240 acres of land owned by Domingo Bastanchury and in 1904 assigned and transferred this lease to petitioner, Murphy Oil Company. An oil-well was drilled on the land under this lease, but it was capped. The widow of Domingo Bastanchury, as the administratrix of his estate, later claimed in the litigation involved herein that this well was represented to him to be a dry hole when in fact oil was discovered

therein and that he sold the land with that belief. In December, 1904, E. W. Bacon, then secretary of the Murphy Oil Company, purchased the fee in the land from Domingo Bastanchury at $35 an acre, for $78,400, and leased the surface rights to Bastanchury. In January, 1905, Bacon and his wife granted and conveyed the said land to the petitioner, the Murphy Oil Company. Thereafter oil development on the property proceeded and oil was produced in paying quantities.

On December 1, 1913, the petitioner leased the land, which was thereafter known as the Coyote

*

PETITIONER
MURPHY O
DEPLETI

COYOTE

Year	Beg. of Year	$ Capital Sum Added Total	Bbls. Reserves Added Deducted	Total
3/1/13 to 11/30/13		$15,710,899.52		41,191,9
12/1/13 to 12/31/13	15,547,522.17	15,547,522.17	30,572,440	10,190,9
1914	15,519,401.57	15,519,401.57		10,172,9
1915	15,328,306.01	15,328,306.01		9,904,9
1916	14,895,927.89	14,895,927.89		9,480,9
1917	13,842,835.61	13,842,835.61		8,660,9
1918	11,587,891.01	11,587,891.01		7,087,9
1919	8,532,698.73	8,532,698.73		5,051,9
1920	5,754,204.51	5,754,204.51		3,406,9

project, to the Standard Oil Company of California, together with land thereafter known as the Whittier property. A bonus of $5,173,595.18 was paid for the lease on these two oil properties, which bonus was apportioned by the Commissioner to these properties in the sum of $4,517,402.70 and $656,192.48, respectively. Hereinafter only the depletion of the Coyote property as affected by the portion of the bonus allocated to that property will be considered in detail, but the same principles are also applicable to the depletion of the Whittier property.

The Commissioner of Internal Revenue fixed the

XHIBIT "A"
OMPANY.
CHEDULE.

Free Oil	Bbls. Production Royalty Oil	Total	Unit Cost	$ Depletion Sustained
——	428,351	428,351	.38141	163,377.35
——	18,432	18,432	1.52564	28,120.60
142,829	125,256	268,085	1.52564	191,095.56
144,836	279,379	424,215	1.54764	432,378.12
149,719	670,213	819,932	1.57128	1,053,092.28
161,675	1,410,707	1,572,382	1.59845	2,254,944.60
167,622	1,868,722	2,036,344	1.63491	3,055,192.28
——	1,644,897	1,644,897	1.68916	2,778,494.22
——	1,340,237	1,340,237	1.68916	2,263,874.73

value of the land, referred to as "Coyote," on March 1, 1913, at $15,710,899.52 and the recoverable oil content of the land on that date at 41,191,605 barrels, and thus fixed the value of the recoverable oil in the ground at 38.141 cents per barrel. The Commissioner fixed the value of the land at the time of the execution of the lease to the Standard Oil Company on December 1, 1913, the terms of which are involved in this proceeding, as $15,547,522.17. This value was that fixed for the land on March 1, 1913, less the value of the oil produced therefrom at 38.141 cents per barrel up to December 1, 1913, the date of the lease, that is, less $163,377.35. Under the direction of the Board of Tax Appeals in its decision and in opposition to the views entertained by the Commissioner on the subject as determined by the deficiency tax, the Commissioner also fixed this amount ($15,547,522.17) as the value of the land in December, 1913, after the execution of the lease and subject to the lease. Thus, upon the execution of the lease, the Commissioner, in compliance with the order of the Board, raised the value of the recoverable oil belonging to, or payable as royalty to, the petitioner to $1.52564 per barrel, that is, four times $0.38141. This figure was arrived at by subtracting from the total recoverable mineral content of 41,191,605 barrels, less 428,351 barrels already recovered, three-fourths thereof, to wit, 30,572,440 barrels, and leaving as the recoverable portion belonging to the petitioner, as royalty oil, 10,190,814 barrels. The value of this royalty oil was taken as equal to the value of the land prior to the execution of the lease,

thus giving as the value of each barrel of royalty oil $1.52564. It seems absurd on its face to estimate the value of the royalty oil in the ground at the time of the execution of the lease at 38.141 cents, and immediately thereafter at $1.52564, but the absurdity disappears when it is observed that the $1.52564 represents oil brought to the surface, and that the difference between the 38.141 cents and the $1.52564 represents the cost to the petitioner of bringing the oil to the surface, that is, it cost petitioner three barrels of oil at 38.141 cents to bring a barrel of oil to the surface which was worth 38.141 cents in the ground, and $1.52564 at the surface. "Worth" in this connection meaning capital investment. But the actual depletion of the value of the land as of March 1, 1913, by the recovery of oil therefrom was nevertheless four barrels of oil at 38.141 cents for each barrel of royalty oil recovered for the petitioner. In these statements we are ignoring for the present the added cost of extraction due to the consumption of oil by the lessee in its work of development and production which was known as "free oil." In considering the reasonableness of this figure of $1.52564 as representing the portion of petitioner's capital investment in the oil recovered as royalty to be deducted from the total receipts actually derived from the royalty oil in determining the proportion thereof which was petitioner's income and assuming, as the Commissioner and the Board of Tax Appeals held, that the market value of the property on November 30, 1913, was $15,547,522.17,

it should be observed that the owner of the land had several methods of reducing its capital to money. This it could do by selling the property for its market value, which was the same as March 1, 1913, less depletion, in which event the purchase price would not be subject to income tax because it would merely represent a change in form of capital, or it could continue the operations it was already engaged in for the bringing of the oil to the surface. Instead of doing either, it could enter into a lease or contract with a third party by which the third party undertook to bring the oil to the surface and sell it or turn it over to the petitioner. This would reduce the amount of oil which the owner would be entitled to sell at market prices, but, depending upon the market price of oil, might or might not increase his income. The effect of the lease as determined by the Board of Tax Appeals (ignoring the question of bonus for the moment) was that the owner paid from the oil content of the soil 30,572,440 barrels of oil, plus the free oil allowed to the tenant under the lease, as the expense of bringing to the surface the remaining recoverable oil it was to receive. Under these circumstances it no doubt would be a reasonable adjustment of the relationship of the landlord and tenant with reference to depletion to fix $1.52564 as the capital investment on March 1, 1913, in each barrel of royalty oil brought to the surface and to allow this whole amount to the landlord as his depletion, the tenant having no capital investment at this time (March 1, 1913) and on this hypothesis it would be entitled to no depletion allowance.

We are here met with the difficulty in the case arising from the payment of a bonus of $4,517,402.70, which was determined by the Commissioner in one way and by the Board of Tax Appeals in the other. The lessee agreed to pay this money in installments extending over a period of five years aggregating $4,517,402.70, regardless of whether or not any oil was produced from the property during that period. This amount the Board of Tax Appeals determined to be income to the landlord taxable as such during the years in which it was paid, but the Commissioner had determined the entire bonus to be a return of capital investment to the landlord (with certain minor deductions hereinafter referred to), that is to say, the Commissioner in effect held that the petitioner did not pay 30,572,440 barrels of oil in the ground valued at 38.141 cents per barrel to the lessee for bringing petitioner's royalty oil to the surface (that is, $11,660,634.34 worth of oil for that purpose), but paid that amount less the bonus of $4,517,402.70, to wit, $7,143,231.64. By this process of reasoning the Commissioner came to the conclusion that the amount of petitioner's capital invested in its royalty oil in the ground was about $1.08236 per barrel. Consequently, the point involved here resolves itself into the question whether or not $1.52564 or $1.08236 should be deducted from the selling price of each barrel of royalty oil recovered during the years 1919 and 1920, as the petitioner's capital investment therein of March 1, 1913.

The determination by the Board of Tax Appeals

as to the depletion of the property due to the production of oil is predicated upon the proposition that when the petitioner shifted his position from that of owner to that of landlord the value of his interest remained exactly the same, notwithstanding that he had received $4,517,402.70 in cash from his investment as of March 1, 1913. Now, it is obvious that if the land in fee was worth $15,547,522.17 immediately before the lease and that if the lease was a reasonable one to be made at the time, that is, so reasonable that it did not depreciate the value of the capital investment of the landlord in the land, he could have sold the land subject to the lease for exactly the same sum for which he could have sold the land without the lease, namely, $15,547,522.17, but a sale under these circumstances would of course give to the purchaser the right to the bonus payments of $4,517,402.70. If the landlord insisted upon reserving to himself these bonus payments, it is obvious that under the circumstances he could not hope to get more for the land subject to the lease than the $11,030,119.47 cash, which represented his capital investment in the recoverable royalty oil. It would seem then that the interest of the landlord in the royalty oil at the surface would be his proportion of the recoverable content of 10,190,814 barrels at a price to equal $11,030,119.47, which would be $1.08236 per barrel.

Thus far we have discussed on principle rather than on authority the depletion allowance to the landlord upon the relative bases adopted by the

Board of Tax Appeals and the Commissioner, as to the capital investment of the landlord in each barrel of recoverable royalty oil, which leads us to the conclusion that the Commissioner was right and the Board of Tax Appeals was wrong, but there is an entirely different line of approach to the subject, which leads more definitely and more authoritatively to the same conclusion, in the light of legislation, regulations and decisions on the subject heretofore rendered. We will now consider the subject from that angle. The subject under consideration has been of sufficient importance to invoke the action of Congress in its revenue laws and has been the subject of rules and regulations adopted by the Commissioner and is involved in many judicial decisions. Originally the method of fixing the depletion allowance for oil properties under the revenue law of 1913 was a fixed percentage of the value of the oil recovered, to wit, 5 per cent (sub. G (b), § II, Revenue Act of 1913; 38 Stat. 114, 166). In 1918 the revenue law was passed which was in force at the time of the taxable years 1919 and 1920, now under consideration. That law applicable to depletion is as follows:

> "Sec. 214 (a) That in computing net income there shall be allowed as deductions: * * *
>
> (10) In the case of mines, oil and gas wells, other natural deposits, and timber, a reasonable allowance for depletion and for depreciation of improvements, according to the peculiar conditions in each case, based

upon cost including cost of development not otherwise deducted: PROVIDED, that in the case of such properties acquired prior to March 1, 1913, the fair market value of the property (or the taxpayer's interest therein) on that date shall be taken in lieu of cost up to that date: PROVIDED FURTHER, That in the case of mines, oil and gas wells, discovered by the taxpayer, on or after March 1, 1913, and not acquired as the result of purchase of a proven tract or lease, where the fair market value of the property is materially disproportionate to the cost, the depletion allowance shall be based upon the fair market value of the property at the date of the discovery, or within thirty days thereafter; such a reasonable allowance in all the above cases to be made under rules and regulations to be prescribed by the Commissioner with the approval of the Secretary. In the case of leases the deductions allowed by this paragraph shall be equitably apportioned between the lessor and lessee; * * * ."

Revenue Act of 1918, c. 18, 40 Stat. 1057. See, also, § 234 (a)-(9) Id.

It is to be observed that the statute quoted provides for a reasonable allowance for depletion of the oil content of oil land "based upon costs, including cost of development not otherwise deducted." Now the cost of the land in the case at bar was $78,400. The cost of development is not shown by the record, but Congress further provided

in regard to lands situated as the land in the case at bar, "that in the case of such properties acquired prior to March 1, 1913, the fair market value of the property (or the taxpayer's interest therein) on that date shall be deducted in lieu of costs up to that date." So that in effect, as applicable to the case at bar, the law requires that the depletion allowance shall be "based upon the fair market value of the property on March 1, 1913, ($15,710,899.50) and the cost of development not otherwise deducted." The statute further provides: "Such reasonable allowances, in all the above cases to be made under rules and regulations to be prescribed by the Commissioner with the approval of the Secretary. *In case of leases the deductions allowed by this paragraph shall be equitably apportioned between the lessor and lessee.*" (Italics ours.)

The Supreme Court has had occasion to consider the right to a depletion allowance of a lessee upon a royalty basis of two tracts of mining land situate in Minnesota. Lynch vs. Alworth-Stephens Co., 267 U. S. 364. This lessee, in the case cited, who was to pay a royalty of 30 cents a ton for iron ore produced, had sublet one of the tracts upon a royalty basis of 75 cents a ton and the other 60 cents a ton. He was thus in the dual position of lessee and lessor. The Supreme Court held that he had a property right in the property and an interest therein (a "depletable base," to use the terminology of the briefs) within the meaning of the revenue laws of the United States. (§ 12–A,

Revenue Act of 1916, 39 Stat. 756, 757.) In that regard, Justice Sutherland, speaking for the court, said:

> "It is, of course, true that the leases here under review did not convey title to the unextracted ore deposits, U. S. v. Biwabik Mining Co., 247 U. S. 116, 123; but it is equally true that such leases, conferring upon the lessee the exclusive possession of the deposits and the valuable right of removing and reducing the ore to ownership, created a very real and substantial interest therein. See Hyatt v. Vincennes Bank, 113 U. S. 408, 416; Ewert v. Robinson, 289 Fed. 740, 746–50. And there can be no doubt that such an interest is property. Hamilton v. Rathbone, 175 U. S. 414, 421; Bryant v. Kennett, 113 U. S. 179, 192.
>
> * * * * * * * *
>
> "We agree with the circuit court of appeals, 294 Fed. 194, that, 'The plain, clear and reasonable meaning of the statute seems to be that the reasonable allowance for depletion in case of a mine is to be made to every one whose property right and interest therein has been depleted by the extraction and disposition "of the product thereof which has been mined and sold during the year for which the return and computation are made." And the plain, obvious and rational meaning of a statute is always to be preferred to any curious, narrow, hidden sense that nothing but the exigency of a hard case and the ingenuity and study

of an acute and powerful intellect would discover.'

"It is said that the depletion allowance applies to the physical exhaustion of the ore deposits, and since the title thereto is in the lessor, he alone is entitled to make the deduction. But the fallacy in the syllogism is plain. The deduction for depletion in the case of mines is a special application of the general rule of the statute allowing a deduction for exhaustion of property. While respondent does not own the ore deposits, its right to mine and remove the ore and reduce it to possession and ownership is property within the meaning of the general provision. Obviously, as the process goes on, this property interest of the lessee in the mines is lessened from year to year, as the owner's property interest in the same mines is likewise lessened. There is an exhaustion of property in the one case as in the other; and the extent of it, with *the consequent deduction to be made, in each case is to be arrived at in the same way, namely, by determining the aggregate amount of the depletion of the mines in which the several interests inhere, based upon the market value of the product, and allocating that amount in proportion to the interest of each severally considered*" (pp. 369, 370). (Italics ours.)

According to this very clear exposition of the Revenue Act of 1916 (39 Stat. 756, 757, §§ 2, 10, 12a), which is unambiguous, the lessee as well as

the lessor of the oil properties was entitled to a depletion allowance. The regulations of the Treasury Department (Reg. 33, Art. 170) under the Revenue Act of 1916 provided for the method for ascertaining and apportioning the allowance for depletion of oil property to the lessor and lessees of such property where a bonus has been paid substantially as was done by the Commissioner in the case at bar under the Act of 1918.

The Revenue Law of 1918, on the subject hereinabove quoted, allowed larger discretion to the Commissioner of Internal Revenue in ascertaining the annual depletion to be allowed, but expressly required that the depletion allowance should be "equitably apportioned between the lessee and lessor." (§ 214–a (10), above quoted.) The allowance of the total depletion to the lessor, as was required by the decision of the Board of Tax Appeals, left nothing to be apportioned to the interest of the lessee in the property. It can hardly be doubted that from the standpoint of the lessee the bonus payments represented invested capital and it is so provided by Treasury Regulations 45, Article 215 (hereinafter quoted in full), wherein it is provided that "The bonus or other sum paid by the lessee for a lease made on or after March 1, 1913, will be his value for depletion as of date of acquisition." As the total value of the oil in the ground in the Coyote property was $15,547,522.17, it is obvious that the lessee, by the payment of the bonus of $4,517,402.70, had an interest in each of the 40,763,254 barrels of oil in the ground of

about one-third the value thereof, or, to be accurate, 11.083 cents, and that the lessees capital investment is decreased to that extent by each barrel of oil brought to the surface. It would follow as an ancillary proposition that the capital investment or at any rate the depletion allowance of the lessor in each barrel of oil in the ground, as of the date of the lease, would be accordingly decreased, that is, would be 27.058 cents. That is to say, for the purpose of determining depletion and apportioning the amount thereof between the lessor and the lessee under the statute and the rules and regulations of the Treasury Department, the lessee has a depletion interest in each barrel of oil produced of 11.083 cents which cannot properly be allowed to the lessor. The Supreme Court has repeatedly passed upon this principle.

The Supreme Court in Burnett vs. Thompson Oil & Gas Co., 283 U. S. 301, had occasion to consider the depletion allowance for oil properties acquired before March 1, 1913, under the Revenue Act of 1918. The taxpayer was contending for a depletion allowance which should make up for inadequate depreciation allowances in previous years under former revenue acts upon the theory that the taxpayer was entitled during the life of his lease to recover by way of depletion the full amount of his capital investment. That is to say, the taxpayer was contending for depletion allowance for the taxable years during the remainder of the term, which would cover the actual depletion between March 1, 1913, and December 31, 1915, $91,686.15, whereas he had been actually allowed during that

period under the revenue laws only $6,322.02. It was conceded that the entire question was one of statutory construction. The Commissioner of Internal Revenue, acting under the regulations of the Department, had determined the depletion suffered during the taxable year by estimating the invested capital at the beginning of the year as of the value of March 1, 1913, less the actual depletion theretofore sustained, that is, less the $91,686.15 above referred to. The Commissioner had limited the depletion allowance for the taxable year to the actual depletion sustained during the taxable year, in accordance with the decision in Lynch vs. Alworth-Stephens Co., *supra,* construing the Revenue Law of 1916. The Supreme Court sustained the ruling of the Commissioner, thus holding that the action of the Commissioner limiting the depletion allowance to the actual depletion during the taxable year was a proper interpretation of the Revenue Law of 1918, as well as that of 1916. The court stated (page 306):

> "The nature of the tax as one for annual periods has been repeatedly mentioned in dealing with its application in various situations. The taxable year 1918, and that only, is involved, and deductions applicable to that year only should be allowed."

In the case at bar we are therefore dealing with the depletion allowance for the years 1919 and 1920 only, and the allowance is limited to the actual depletion during those years, under the Revenue Law of 1918, as was also the case under the

Revenue Law of 1916, which was 6,579,588 bbls. and 5,360,948, respectively.

We turn now from the consideration of the statute and of the decisions of the Supreme Court to the rules and regulations of the Treasury Department. The Commissioner adopted regulations in pursuance of the statute (No. 45, Art. 215) as follows:

> "Art. 215. Depletion—Adjustments of accounts on bonus or advanced royalty.—(a) Where a lessor receives a bonus or other sum in addition to royalties, such bonus or other sum shall be regarded as a return of capital to the lessor, but only to the extent of the capital remaining to be recovered through depletion by the lessor at the date of lease. If the bonus exceeds the capital remaining to be recovered, the excess and all the royalties thereafter received will be income and not depletable. If the bonus is less than the capital remaining to be recovered by the lessor through depletion, the difference may be recovered through depletion deductions based on the royalties thereafter received. The bonus or other sum paid by the lessee for a lease made on or after March 1, 1913, will be his value for depletion as of date of acquisition."

This Regulation was amended by Article 216, Regulations 69, to read as follows:

> "Art. 216 (215). Depletion—Adjustments of accounts based on bonus or advanced roy-

alty.—(a) Where a lessor receives a bonus in addition to royalties, there shall be allowed as a depletion deduction in respect of the bonus an amount equal to that proportion of the cost or value of the property on the basic date which the amount of the bonus bears to the sum of the bonus and the royalties expected to be received. Such allowance shall be deducted from the amount remaining to be recovered by the lessor through depletion, and the remainder is recoverable through depletion deductions on the basis of royalties thereafter received."

Under this rule for the allowance of depletion to the lessor as result of bonus payments and expressing the anticipated net market price of oil as X, the amount would be expressed by the formula:

$$\text{Depletion deduction to lessor} = \frac{\$4,517,402.70}{(X \times 10,190,814 + \$4,517,402.70)} \text{ of } \$15,547,522.17$$

It will be observed that the effect of this method of deducting a bonus is to put the bonus on a par with the actual receipts from the sale of oil by assuming that the bonus contains the same element of profit or income to the landlord that would be derived from the sale of oil recovered by royalty.

The Board of Tax Appeals held that the bonus was not return of capital in whole or in part, but was income, and that to consider such bonus in fixing depletion allowance was a departure from the depletion concept, and therefore the regulation

of the Commissioner, which treated the bonus as a partial return of capital, was void because in conflict with the statute in relation to taxable gains. In order to make the proposition involved more clear, we quote as follows from the opinion of the Board of Tax Appeals:

> "The respondent confesses error to the extent that he failed to follow the regulation. It remains for us to test the validity of the rule therein promulgated. In Nelson Land & Oil Co., 3 B. T. A. 315, we made it clear that, in our opinion, such a bonus received by a lessor was not a return of capital but is an advance rental or royalty and is taxable as income. That case was followed in R. H. Hazlett, 10 B. T. A. 332, and we are not cited and have been unable to find any authority to the contrary. See also Henry L. Berg, 6 B. T. A. 1287; John T. Burkett, 7 B. T. A. 560; D. R. McDonald, 7 B. T. A. 1078; and R. H. Hazlett, *supra,* in which we held that such bonuses were not gains derived from the sale of 'capital assets' under the capital gain provisions of the 1921 Act.
>
> "The bonus payment in the instant case was a part of the consideration paid for the lease. While expected production undoubtedly was considered in fixing the amount of the bonus, it is elementary under the laws governing such agreements that its payment did not, in any wise, depend upon, or relate to, production. The lessee's liability therefor was fixed by the

terms of the contract. On the other hand, the operation of the principle of depletion depends upon exhaustion of resources through production—i. e., the recovery of capital through its conversion from the form of oil resources or reserves into marketable products or the equivalent received for such product. Under such principle the depletion allowance for the year or years of the bonus payments can only be measured by reference to the oil produced. If, as we have pointed out, the bonus is income, no part of which represents recovery of capital, it follows that any depletion allowance against such income is a departure from the depletion concept. The regulation relied on by the respondent is clearly such a departure. While it might, in some cases at least, produce a more equitable result, the statutory allowance may not be so varied by administrative regulation." Murphy Oil Co. vs. Commissioner of Internal Revenue, 15 B. T. A. 1195.

For the same reason we also quote the decision of the Board in Nelson Land & Oil Co., 3 B. T. A. 315, cited in the foregoing excerpt from the opinion of the Board:

"Why a 'bonus or other sum in addition to royalties' forming a part of the consideration for the lease should be regarded as a return of capital any more than the royalties is beyond our comprehension. It would be just as logical to hold that the royalties, to the extent of the capital remaining to be recovered by the lessor,

constitute a return of capital. The method prescribed by the statute of returning to a corporate taxpayer its capital investment, free from taxation, is through the depletion allowance provided for by section 234 (a) (9) of the Revenue Acts of 1918 and 1921. A bonus paid under such circumstances is as much a part of the consideration as the royalties. It is in fact and in substance a part of the royalties" (pp. 325–6).

The Board in that case quoted from the decision of the Supreme Court in Work vs. United States ex rel. Mosier, 261 U. S. 352, with reference to a bonus paid for an oil and gas lease upon lands belonging to members of the Osage Tribe as follows:

> "It was in effect a supplement to the royalties already determined. It was really part of the royalty or rental in a lump sum or down payment. We do not see how it can be classified as anything else. It was income from the use of the mineral resources of the land. Of course, it involved a consumption and reduction of the mineral value of the land, but so does a royalty. This is an inevitable characteristic of income from the product of the mine."

The position of the Board in this case is to the effect that the bonus does not come within the provisions of the statute in reference to capital gain and that it must therefore be treated as income notwithstanding the provisions of the statute and of the regulations regarding depletion allowances. It will also be observed that the Board classified bonus as

identical with royalty oil and that neither could justly be regarded as return of capital, while the whole theory of the depletion allowance is that the proceeds derived from the sale of royalty oil is of necessity in part a return of capital. It is the only manner in which the capital represented by the oil will be returned to the lessor, and for that reason is subject to a depletion allowance. The depletion allowance under the ruling of the Commissioner in this case was made to the taxpayer upon the theory that although its royalty amounted to over two million dollars a large portion of that royalty constituted a return of capital which was allowed to it under the statute to compensate for the depletion of its oil reserve. The question in this case is the amount per barrel to be allowed to the petitioner as its returned capital and this must be determined by ascertaining, as the law provides, the fair market value of the property on March 1, 1913, and by allowing a reasonable allowance for depletion based in part upon that property value. The theory upon which the Commissioner has proceeded in fixing petitioner's tax under the regulations of the Treasury Department is that the taxpayer is entitled to the return of his entire capital in the form of bonuses and royalties, and that his liability for tax upon the income is upon the balance of the income derived from the property after deducting the installment of capital included in the royalty oil. The regulation is not only in conflict with the statute, but directly conforms thereto. The statute with reference to depletion of oil properties is a special one with reference to the particular subject

of oil leases involving the production of oil and minerals from mines, and the consequent return of capital by the owners of interests therein, and controls over other general provisions of the law in regard to the return of capital investments.

We hold that the Commissioner correctly determined that at least a part, if not all, of the bonus payment is to be treated as return of capital. The burden is on the taxpayer to show that the computation of tax by the Commissioner is erroneous, and there is a failure of proof in this case sufficient to permit allocating a part of the bonus payment to return of capital and part to income, under the above quoted regulation (Reg. 45, Art. 215, as amended). An essential element of proof in order that a tax might be determined in accordance with the regulations of the Treasury Department was proof of the probable market value of the oil to be marketed under the lease in terms of dollars per barrel, and this data not having been furnished by the taxpayer it failed to prove that it is entitled to have any part of the bonus treated as income rather than a return of capital. Thus, upon the record in this case, either all of the bonus payment is to be treated as a return of capital or none of it is, and the appeal has been so presented by the petitioner. The Commissioner must therefore be sustained in his estimate of the tax.

In view of our conclusion with regard to the relation of the bonus to the depletion allowance, it will be necessary to consider the petition of the taxpayer to review action of the Board on the ground that it erred in treating the payment in settlement

of litigation and the expense thereof as a capital expenditure.

The administratrix of the estate of Domingo Bastanchury, Maria Bastanchury, brought a suit to recover from petitioner the 2,240 acres of land sold by her husband to the petitioner's vendor, offering to restore the purchase price of $78,400, upon the ground that the property was obtained by fraudulent concealment of the fact that the oil-well sunk by petitioner's vendor was successful and that the decedent therefor sold the land for an inadequate consideration because of such concealment. In order to toll the statute of limitations, it was alleged that the fraud was discovered within the statutory period. The substance of the allegation from the standpoint now under consideration was that the petitioner's predecessor had acquired the title to the property without paying an adequate consideration for it, which it in equity still owed. The remedy invoked was that of rescission and as an incident to rescission a recovery of the proceeds derived from the sale of oil extracted therefrom.

The defrauded vendor had the right thus to rescind, if the allegations were true, or to confirm the sale and sue for damages for the fraud. This damage would no doubt be measured by the difference in the value of the thing sold, as it was believed by the vendor, and its actual value. See, Hines vs. Brode, 168 Cal. 507. While the suit was one to rescind, the settlement thereof for a money consideration necessarily involved a confirmation of the sale and a payment of damages for the fraud in an amount fixed by agreement

instead of by decree of Court by way of compensation for the land. While the difference between the value received by the vendor and the value of the land at the time of the transaction, judging from its appraised value in the case at bar, must have been much more than the amount received in settlement, it does not alter the fact that the payment made to the vendor was substantially a deferred payment for the property. It was therefore essentially a capital investment and not allowable as a deduction from income. Moreover, in fixing the tax of the petitioner it already had been given the benefit of the full market value of the property as of March 1, 1913, upon the theory that it owned the property at that time. The $1,200,000 therefore was not only not a proper deduction from the income because it was a capital expenditure, but it should not be added to the capital in determining the depletable base, for that had already been fixed by the statute as a fair market value of the property on March 1, 1913, and this estimated value included the entire property, including, of course, the interest therein which was still owned by Domingo Bastanchury and which was in effect subsequently acquired by petitioner by the payment of the additional purchase money. If the money paid in settlement of the litigation is not a proper addition to capital investment, neither is the $32,151.77 expended in 1918, nor the $170,877.24 expended in 1919 as attorneys' fees and costs of the litigation. We therefore agree with the conclusion of the Board of Tax Appeals on this subject, which was as follows:

"To the extent that the expenses and payment were incurred and made in defense of the claim against the oil properties they were capital expenditures. We have repeatedly held that the cost of defending title, whether in the form of legal fees or compromise payments, is a capital expenditure representing additional cost of the property. Lincoln L. McCandless, 5 B. T. A. 1114; Gopher Granite Co., 5 B. T. A. 1216; Seletha O. Thompson, 9 B. T. A. 1342; Frederick McLean Bugher, *supra;* North American Oil Consolidated, 12 B. T. A. 68; Phoenix Development Co., 13 B. T. A. 414. The decisions in Kornhauser v. U. S., *supra,* and the Superheater Co., 12 B. T. A. 5, which are relied upon by the petitioner, are not in conflict with these cases. In the Superheater case the contemplated litigation grew out of an action of the board of directors, acting as such. The claim settled did not involve title. In the Kornhauser case the legal expenses were incurred to contest a claim against income received, differing fundamentally from the ordinary attack on title, even though the income in question consisted of shares of stock.

"In view of such conclusion we must reject petitioner's contention that the total deductions claimed should be allowed. We can not allow the total and it would be idle for us to further consider whether any part of such total (i. e., that portion allocable to the defense and settlement of the claim for accounting) is allow-

able as the record furnishes no basis for the apportionment of the whole among the several claims defended or settled.

"The petitioner's contention that if the litigation and settlement costs are not deductible they must represent capital expenditures to be added to the amortizable capital value, must likewise be rejected."

We refrain, however, from determining whether or not a portion of the amount paid in settlement and a portion of the attorney fees in the action was to be properly apportioned to the defense of the title, and another portion to the defense of the claim to recover proceeds derived from the land. As stated by the Board of Tax Appeals, there is no basis for making such allocation, even assuming that such an allocation could or should be made, if there were sufficient evidence upon which to base it. We therefore express no opinion upon the propriety of such allocation, although, as we have indicated, we are inclined to the view that none should be made. The order of the Board of Tax Appeals is reversed as to bonus deductions and affirmed as to attorneys' fees, costs and settlement, and the determination of the Commissioner is affirmed.

[Endorsed]: Opinion. Filed Jan. 11, 1932. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

Nos. 6388–6459.

MURPHY OIL COMPANY, a Corporation,
Petitioner and Cross-Respondent,
vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent and Cross-Petitioner.

JUDGMENT U. S. CIRCUIT COURT OF APPEALS.

Upon Petitions to Review an Order of the United States Board of Tax Appeals.

This cause came on to be heard on the transcripts of the record from the United States Board of Tax Appeals and was duly submitted.

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court, that the order of the said Board of Tax Appeals in these causes be, and hereby is reversed, and that these causes be, and hereby are remanded to the said Board of Tax Appeals, with directions to disallow the claims of Murphy Oil Company as to bonus deductions and as to attorneys' fees, costs and settlement, and to enter a redetermination of tax deficiencies for the years 1919 and 1920 in accordance with the determination of the Commissioner of Internal Revenue.

[Endorsed]: Judgment. Filed and entered January 11, 1932. Paul P. O'Brien, Clerk.

Filed Jan. 15, 1932. Paul P. O'Brien, Clerk.

At a stated term, to wit, the October term, A. D. 1931, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the city and county of San Francisco, in the State of California, on Tuesday, the twenty-third day of February, in the year of our Lord one thousand nine hundred and thirty-two. Present: Honorable CURTIS D. WILBUR, Senior Circuit Judge, Presiding; Honorable WILLIAM H. SAWTELLE, Circuit Judge.

[Title of Cause.]

ORDER DENYING PETITIONS FOR A REHEARING.

Upon consideration thereof, and by direction of the Court, IT IS ORDERED that the petitions of Murphy Oil Company, filed in each of above causes on February 8, 1932, for a rehearing of each of above causes be, and each of them hereby is denied.

United States Circuit Court of Appeals for the Ninth Circuit.

Nos. 6388–6459.

MURPHY OIL COMPANY, a Corporation,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent;

and

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

vs.

MURPHY OIL COMPANY, a Corporation,
Respondent.

ORDER STAYING ISSUANCE OF MANDATE.

Upon application of Messrs. Dempsey & Mackay, counsel for the petitioner, and good cause therefor appearing, IT IS ORDERED that the issuance, under Rule 32, of the mandate of this court in the above causes be, and hereby is stayed to and including May 2, 1932; and in the event the petition for a writ of certiorari to be made by the petitioner herein be docketed in the Clerk's office of the Supreme Court of the United States on or before said date, then the mandate of this Court is to be stayed until after the said Supreme Court passes upon the said petition.

CURTIS D. WILBUR,
United States Circuit Judge.

Dated: San Francisco, California, February 26, 1932.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 6388.

MURPHY OIL COMPANY,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

APPLICATION FOR STAY OF MANDATE.

To the Honorable CURTIS D. WILBUR, WILLIAM H. SAWTELLE and WILLIAM P. JAMES, Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Now comes Murphy Oil Company, the petitioner in the above-entitled cause, and moves the Court to enter an order withholding the issuance of the mandate in this case because it is the *bona fide* intention of the petitioner to make proper application to the Supreme Court of the United States for a writ of certiorari in this case within the time permitted by the rules of the Supreme Court of the United States, and in support hereof petitioner attaches the professional statement of its counsel, A. Calder Mackay of Los Angeles, California.

Petitioner's counsel are located in Los Angeles and New York which fact makes it necessary for

counsel to communicate by writing and telegraphing with respect to the preparation of the petition for writ of certiorari and the supporting brief. Such consultation between petitioner's counsel will require more time than is ordinarily required where counsel are in the same city, and therefore it is respectfully requested that the mandate be stayed for at least a period of sixty (60) days.

Dated this 25th day of February, 1932.

RANDOLPH E. PAUL.
RANDOLPH E. PAUL,
Attorney for Petitioner,
170 Broadway, New York City.

THOMAS R. DEMPSEY.
THOMAS R. DEMPSEY,
A. CALDER MACKAY.
A. CALDER MACKAY,
1104 Pacific Mutual Building,
Los Angeles, California.

KENYON F. LEE.
KENYON F. LEE,
BRADNER W. LEE, Jr.
BRADNER W. LEE, Jr.,
Per K. F. LEE.
H. W. Hellman Building,
Los Angeles, California,
Of Counsel.

I hereby certify that it is the *bona fide* intention of the petitioner to petition the Supreme Court of the United States for a writ of certiorari, within the time and as permitted by the rules of the Supreme

Court of the United States and that I believe there is merit in its case and that the judgment of the United States Circuit Court of Appeals ought to be reversed by the Supreme Court of the United States.

A. CALDER MACKAY.

[Endorsed]: Application for Stay of Mandate. Filed Feb. 25, 1932. Paul P. O'Brien, Clerk.

[Title of Court and Couse.]

CERTIFICATE OF CLERK U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing seventy-seven (77) pages in case No. 6388, numbered from and including 1 to and including 77, and the foregoing three hundred and one (301) pages, in case No. 6459, numbered from and including 1 to and including 301 to be a full, true and correct copy of the entire record of each of the above-entitled cases in the said Circuit Court of Appeals, made pursuant to request of counsel for the Murphy Oil Company, a corporation, petitioner and cross-respondent, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

ATTEST my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 31st day of March, A. D. 1932.

[Seal] PAUL P. O'BRIEN,
Clerk.

IN UNITED STATES CIRCUIT COURT OF APPEALS, NINTH CIRCUIT

[Title omitted]

ORDER SUBSTITUTING PARTY PETITIONER-RESPONDENT—NOV. 3, 1930

Upon consideration of the motion of petitioner in each of above causes, this day filed, and it appearing therefrom that on August 15, 1930, Robert H. Lucas resigned and ceased to be Commissioner of Internal Revenue and that on August 20, 1930, David Burnet, became Commissioner of Internal Revenue and ever since that time has been and now is Commissioner of Internal Revenue, it is ordered that said David Burnet, as Commissioner of Internal Revenue be, and he hereby is, substituted for and in the place and stead of Robert H. Lucas as petitioner and/or respondent in each of above causes, and that each of said causes be revived in the name of David Burnet, as Commissioner of Internal Revenue.

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

[Title omitted]

CERTIFICATE OF CLERK U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT TO SUPPLEMENTAL RECORD, CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing page to be a full, true and correct copy of the order substituting party petitioner-respondent entered in this court on November 3, 1930 and constitutes the supplemental transcript of this cause, certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the original thereof remains on file and appears of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City

of San Francisco, in the State of California, this 18th day of May, 1932.

Paul P. O'Brien, Clerk. (Seal United States Circuit Court of Appeals, Ninth Circuit.)

In United States Circuit Court of Appeals for the Ninth Circuit

[Title omitted]

Order Staying Issuance of Mandate—Filed April 28, 1932

Upon application of Mr. A. Calder Mackay, counsel for the petitioner and cross-respondent, and good cause therefor appearing, it is ordered that the issuance, under Rule 32, of the mandate of this Court in the above cause be, and hereby is, stayed to and including May 20, 1932; and in the event the petition for a writ of certiorari to be made by the petitioner and cross-respondent herein be docketed in the Clerk's office of the Supreme Court of the United States on or before said date, then the mandate of this Court is to be stayed until after the said Supreme Court passes upon the said petition.

Curtis D. Wilbur, United States Circuit Judge.

Dated San Francisco, California, April 28, 1932.

[File endorsement omitted.]

Supreme Court of the United States

Order Allowing Certiorari—Filed May 31, 1932

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.